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The Fifty-Nine-Minute Rule: White Christmas, Gray Area?

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*This is their holiday treat . . . There is nothing so simultaneously yearned for and ridiculous as the email invoking the 59 minute rule. We do not take this rule lightly. I am told there have actually been debates regarding the authority . . . to invoke the 59 Minute Rule . . . I was too busy leaving at the time to notice.*¹

Introduction

Good-natured federal managers have long used the so-called fifty-nine-minute rule to excuse brief absences by their civilian employees and to release them from duty early for almost any acceptable reason.² The authority for doing this at taxpayer expense, however, is unclear. One will not find a fifty-nine-minute rule in statutes or federal regulations, yet its use and affect on morale are undeniable.³ In a workforce embracing change, supporting a war, and facing a large scale restructuring, morale can be pivotal. Even so, the caliber and commitment of federal employees might surprise many in the private sector. For the most part, these are not the caricature, clock-watching bureaucrats who sponge off of the American taxpayer and can never be fired.⁴ They are, instead, dedicated personnel responsible not only for their mission but for the sound stewardship of government resources.⁵ So what is it about giving them an hour off that evokes such sarcasm?

Some of this attitude, doubtless, is envy or even a twinge of guilt, but much of it may stem from concerns over the rule's propriety and appearance of propriety. As with many personnel rules, the origins of the fifty-nine-minute rule have been shrouded by time, leaving uncertainty over its status and scope.⁶ Newly proposed revisions to its vestigial foundations may further obscure its basis.⁷ The consequent ambiguity surrounding this time-honored tradition, ironically, can lead to its abuse and to litigation harmful to office morale⁸ yet, even during the season of its most prevalent invocation, few in our workforce seem to have a free hour in which to examine its validity. Thus, it seems appropriate to do so now.

This article will briefly examine the legal and regulatory authority behind particular categories of employee absences. Next, this article examines the origins and uses of the fifty-nine-minute rule, and some noteworthy administrative case decisions involving the rule and its underlying principles. Finally, this article identifies some useful parameters for the rule, including who may approve and receive such absences and when such authority may not be used. This article reveals that there is no government-wide fifty-nine-minute rule, as such. Instead, each agency has the authority to excuse brief absences, and such absences are not necessarily limited to fifty-nine minutes.

¹ TegWar, Why I Love My Job, Reason #59, The 59 Minute Rule, <http://www.tegwar.blogspot.com/> (Nov. 24, 2004).

² *Id.*; see also *infra* notes 113, 156, 161.

³ See, e.g., Matt's House of Nothing in Particular, Lowest of the Low, <http://www.mhonip.com/index.asp> (July 20, 2004) (evincing adverse impact on contractor employee morale when denied excused absence by a contractor, while co-located federal employees received it) (on file with author).

⁴ This comment is based on the author's professional experiences as an Attorney-Advisor with the Office of the Judge Advocate, HQ, U.S. Army Europe & Seventh Army, and at various other U.S. Army legal offices in Germany from December 1983 through the present, especially in regard to Europe-based civilian support of various operations during that period.

⁵ See U.S. DEP'T OF DEFENSE, REG. 5500.7-R, THE JOINT ETHICS REG. para. 2-301b (Aug. 1993) [hereinafter DOD REG. 5500.7-R].

⁶ See, e.g., *supra* note 1 and accompanying text.

⁷ 70 Fed. Reg. 1072 (5 Jan. 2005) (proposing a change to be codified at 5 C.F.R. § 630.209 that would limit agency minimum leave charge to either six or fifteen minutes).

⁸ See, e.g., *Weber v. Dep't of Navy*, 100 F.M.S.R. 80434 (Jan. 18, 2000) (examining, inter alia, whether a selective release of workers under a fifty-nine-minute rule was an abuse of managerial discretion or was otherwise unlawful) (on file with author); see also *Pillard v. U.S. Postal Service*, EEOC No. 05880844, 89 FEOR 23181 (Jan. 24, 1989) (upholding a decision to reinstate a discrimination complaint over the denial of a fifty-nine minute early release from work, and noting that if unlawful discrimination was found, the employee would be entitled to fifty-nine minutes of administrative leave to use at her discretion as a "make whole" remedy).

Administrative Leave

Congress has established a basic federal workweek of forty hours, and U.S. taxpayer dollars fund civil service salaries based on this workweek.⁹ To help ensure U.S. taxpayers get what they pay for, federal agencies must maintain “an account of leave for each employee in accordance with methods prescribed by the General Accounting Office [GAO, now Government Accountability Office].”¹⁰ Hence, civil service employees must remain in some authorized status during the workweek.¹¹ These include duty status, absences without pay, and various forms of leave.¹² The authority to excuse civilian employees from duty is statute-predicated and often specifically regulated.¹³ Unlike their military counterparts, civil servants are not authorized passes, training holidays, or permissive temporary duty.¹⁴ Administrative leave is the closest authorized status to these military absences.¹⁵

Administrative leave is not specifically recognized in statute or federal regulation.¹⁶ The power of federal agencies to grant it, nonetheless, derives from broad statutory authority to regulate their workforces.¹⁷ Because granting administrative leave entails a paid absence without a charge to other paid leave, its use is not without restriction.¹⁸ Comptroller General decisions and Office of Personnel Management (OPM) guidelines¹⁹ limit grants of administrative leave to situations involving brief absences,²⁰ though these sources do not specifically define the meaning of “brief.”²¹ Based upon various agency personnel manuals, administrative leave can range in duration from minutes to days depending on the specific purpose of the leave and how it supports an agency’s mission.²² For lengthy absences, “administrative leave is not

⁹ 5 U.S.C. §§ 6101, 5504 (2000); *see also* 5 C.F.R. § 550.103 (2006).

¹⁰ 5 C.F.R. § 630.101 (2006). The GAO was renamed in 2004.

¹¹ *See* U.S. DEP’T OF DEFENSE, REG. 7000.14-R, FINANCIAL MANAGEMENT REG. vol. 8, ch. 2, para. 020206A (Jan. 2006) [hereinafter DOD REG. 7000.14-R] (stating that “[g]enerally, a full-time employee’s basic work requirement is 80 hours in a pay period . . . Attendance and absence must be recorded consistent with the status in which employed”). The former Army regulation on this point noted “[g]enerally, there must be legal or regulatory authority for an absence from duty during the basic workweek to be excused without charge to leave.” U.S. DEP’T OF ARMY, REG. 690-990-2, HOURS OF DUTY, PAY, AND LEAVE, ANNOTATED bk. 630, para. S11-1 (15 May 1985, obsolete) [hereinafter AR 690-990-2 (obsolete)].

¹² 5 U.S.C. § 6302(b) (providing that “an employee is deemed employed for a full biweekly pay period if he is employed during the days within that period, exclusive of holidays and nonworkdays established by Federal statute, Executive order, or administrative order, which fall within his basic administrative workweek”). The term “administrative order” is not defined in Office of Personnel Management (OPM) regulation and may comprise a simple e-mail from an acting branch head. Office of Personnel Management Compensation and Leave Decisions, No. S002609 (May 25, 1999), *available at* <http://www.opm.gov/payclaims/1999/S002609.htm>.

¹³ U.S. Office of Personnel Management, Index of Laws, Regulations, and other References Related to Leave Administration, <http://www.opm.gov/oca/leave/HTML/LEVINDEX.asp> (last visited Feb. 24, 2006); *see, e.g.*, 5 C.F.R. § 610 subpt. C; 5 C.F.R. § 630.206 (2006).

¹⁴ *See generally* U.S. DEP’T OF ARMY, REG. 600-8-10, LEAVES AND PASSES ch. 5 (31 July 2003) (regarding passes and permissive temporary duty or PTDY); United States Army Europe and Seventh Army Public Affairs Office, Federal and Training Holidays, <http://www.hqusareur.army.mil/USAR EURTrainingHolidays.htm> (last visited Feb. 24, 2006) (explaining, “[t]raining holidays . . . provide for an extended weekend. Military personnel are not required to take leave . . . These are not paid holidays for civilians, however.”).

¹⁵ *See* GENERAL ACCOUNTING OFFICE, OFFICE OF GENERAL COUNSEL, CIVILIAN PERSONNEL LAW MAN., GAO/OGC-96-6, tit. II, ch. 5, para. A 1 (Mar. 1996), *available at* <http://www.gao.gov/special.pubs/og96006.txt> [hereinafter GAO PERSONNEL LAW MAN.] (observing that administrative leave is recognized neither in legislation nor in executive regulation). Because “[t]here are no OPM regulations covering administrative leave” agencies and departments are substantially free to determine its appropriate use. *Id.*

¹⁶ *Id.*; *see also* Excused Absence for Bar Examination Preparation, B-156287, 1975 U.S. Comp. Gen. LEXIS 2447, *2 (Feb. 5, 1975).

¹⁷ Derived, for example, from 5 U.S.C. §§ 301, 6104, 6302(a), and defined in agency regulations.

¹⁸ *See generally* U.S. DEP’T OF DEFENSE, MAN. 1400.25-M, DEPARTMENT OF DEFENSE CIVILIAN PERSONNEL MAN. SC610, SC630 (Dec. 1996) [hereinafter DOD MAN. 1400.25-M] (noting also that “Time-off awards shall not be granted to create the effect of a holiday or treated as administrative excusals or leave; i.e. they shall not be granted in conjunction with a military . . . “training” day or the like.”). For nonappropriated fund employees, excused absence rules include time-off awards. The awards are recorded as administrative leave and may be used to recognize groups but the contribution of each member still should be consistent with the intent of Army awards policies. U.S. DEP’T OF ARMY, REG. 215-3, NONAPPROPRIATED FUNDS PERSONNEL POLICY paras. 5-45b, 9-1a, 9-1d, 9-8d (29 Aug. 2003).

¹⁹ *See* General Accounting Office Act of 1996, Pub. L. No. 104-316, 110 Stat. 3826 (amending 31 U.S.C. § 3702). The Comptroller General resolved leave appeals and inquiries until the OPM assumed this role in 1996.

²⁰ DOD MAN. 7000.14-R, *supra* note 11, vol. 8, ch. 5, para. 051604; *see, e.g.*, Excused Absence for Bar Examination Preparation, 1975 U.S. Comp. Gen. LEXIS 2447, *2-3.

²¹ GAO PERSONNEL LAW MAN., *supra* note 15, tit. II, ch. 5:01 (summarizing Comptroller General decisions often including specifically sustained durations of administrative leave); *see also, e.g.*, AFGE, AFL-CIO, Local 3804 and FDIC, Madison Region, 1986 FLRA LEXIS 454, *56-58 (May 19, 1986) (providing a select summary of Comptroller General decisions on administrative leave time frames for various purposes).

²² *See* GAO PERSONNEL LAW MAN., *supra* note 15, tit. II, ch. 5:01, para. A 3; *see also* DOD MAN. 1400.25-M, *supra* note 18, SC630.7.4 (providing the following examples of the appropriate use of administrative leave: employment interviews; initial drug and alcohol counseling; certification for professional stature; certain management sponsored volunteer projects such as adopt-a-school; PCS in- and out-processing time; emergencies; physical examination for enlistment or induction, and for Congressional Medal of Honor holders to attend certain events). Authority exists for employees to participate in a cancer research effort three days per month using administrative leave. Dep’t of Housing and Urban Dev. Employee, B-156287, 1987 U.S. Comp. Gen. LEXIS 88

appropriate unless [it] . . . is in connection with furthering a function of the agency,”²³ a matter that is best evinced by a statute directly on point.²⁴ Further limits on administrative leave are left largely to agency discretion.²⁵ The Comptroller General has observed it would be appropriate for agencies even to set limits on the amount of administrative leave granted per employee, per time period, “i.e., not to exceed 4 hours in any one day; not to exceed 3 workdays; not to exceed 40 working hours in a calendar year, etc.”²⁶ Consequently, restrictions on the purpose and duration of administrative leave often are reflected in agency regulations, policies, collective bargaining agreements, and practices.

The OPM and the Department of Defense (DOD) have distinguished between two related types of administrative leave in distinct chapters of their regulations: administrative dismissals and excused absences.²⁷ Dismissals, in fact, are a form of excused absence.²⁸ Typically, dismissals involve groups of employees released from duty because of extraordinary circumstances, while other excused absences involve discretionary excusals, usually of individuals, to engage in activities consistent with agency policy.²⁹ To identify the authority for Army activities to exercise a fifty-nine-minute rule, one must first examine how the DOD further defines and restricts its use of these two types of administrative leave.

Administrative Dismissal or What the Fifty-Nine-Minute Rule Is Not

Agencies that distinguish between categories of administrative leave may, of course, establish distinct qualifying situations and approval levels for each category.³⁰ The DOD provides administrative dismissal authority for operation-disrupting circumstances largely beyond an agency’s control.³¹ Commanders and activity heads enjoy approval authority for installation level dismissals,³² but “[g]roup dismissals should be rare and authorized only when conditions are severe or normal operations would be significantly disrupted [and they] may not be used to create the effect of a holiday (to include activity down days and training days).”³³ The DOD’s dismissal rules not only require an approval authority to identify an emergency situation,³⁴ but also to consider the “practices of private employers in the area, the use of unscheduled leave in individual cases, and the severity of working or commuting conditions.”³⁵ Even then, only non-emergency employees are

(Dec. 11, 1987). Authority also exists for up to forty hours of excused absence during investigations of employees before a removal or suspension determination is made. Chairman, U.S. Civil Service Commission, B-135906, 1958 U.S. Comp. Gen. LEXIS 9238 (Sept. 11, 1958). *But see, e.g.*, Gilbert H. Dawson, B-176020, 1972 U.S. Comp. Gen. LEXIS 2016 (Aug. 4, 1972) (finding forty hours of administrative leave to represent an installation in a chess tournament was not appropriate). Further examples may arise in bargaining context. For example, a union, inter alia, sought bargaining on excused absence for “[c]onducting business with official offices and utility companies of the unit employee’s host nation, required because of the teacher’s status as a foreigner in the host nation.” Overseas Edu. Ass’n, Inc. and Dep’t of Defense Dependents Schools, 29 FLRA No. 61, sec. 12, proposal 10, art. 20 (Oct. 2, 1987). Reviewing the propriety of more lengthy absences, the Comptroller General also emphasizes whether leave is for some purpose connected to the employee’s work and, as with voting and blood donations, is for some civic purpose. Excused Absence for Bar Examination Preparation, B-156287, 1975 U.S. Comp. Gen. LEXIS 2447 (Feb. 5, 1975).

²³ Elmer DeRitter, Jr., B-207996, 1982 U.S. Comp. Gen. LEXIS 40561, *4 (Sept. 28, 1982); *see also* Chairman, U.S. Civil Serv. Comm’n, B-156506, 44 Comp. Gen. 643 (1965).

²⁴ *See, e.g.*, Adm., Fed. Aviation Agency, B-155580, 44 Comp. Gen. 333 (1964).

²⁵ GAO PERSONNEL LAW MAN., *supra* note 15, tit. II, ch. 5:0.1, para. A 1; *see* O. Medlin, Dep’t. of Air Force, B-179626, 1974 U.S. Comp. Gen. LEXIS 233, *1, *3-4 (Feb. 12, 1974). Agencies may administratively determine whether employees are to be charged leave for periods of less than one hour. M.E. Smith, B-175627, 1972 U.S. Comp. Gen. LEXIS 2149, *1 (July 5 1972).

²⁶ Federal Employees Providing Advice and Support to Fed. Credit Unions, B-212457, 1984 U.S. Comp. Gen. LEXIS 653, *7 (Aug. 23, 1984).

²⁷ *See* 5 C.F.R. §§ 610.302, 630.206 (2006); DOD MAN. 1400.25-M, *supra* note 18, SC610, SC630.

²⁸ *See* DOD, REG. 7000.14-R, *supra* note 11, vol. 8, ch. 5, para. 051603 (listing installation closures under excused absence examples). The *Federal Personnel Manual* also had addressed dismissals and excusals in respective chapters but referred to group dismissals as a form of excused absence. Excused absence was synonymous with administrative leave. U.S. OFFICE OF PERSONNEL MGMT., BASIC FEDERAL PERSONNEL MANAGEMENT ch. 630, paras. 11-7a, 11-9a(2) (Last OPM Update: Inst. 344, June 21, 1988) (obsolete); *see also* AR 690-990-2 (obsolete), *supra* note 11, bk. 610, para. S3-3 (treating dismissal as an excused absence).

²⁹ *See, e.g.*, DOD MAN. 1400.25-M, *supra* note 18, SC610.3, SC630.7; Army Personnel Management and Information Support System, *Excused Absences and Administrative Dismissal*, <http://cpol.army.mil/library/permiss/5012.html> (last visited Feb. 27, 2006) [hereinafter PERMISS article].

³⁰ *See* 5 U.S.C. § 301 (2000).

³¹ DOD MAN. 1400.25-M, *supra* note 18, SC610.3.1. For example, dismissal may be appropriate for severe, hazardous weather, unforeseen power or water outages, and similar instances. *Id.*

³² *Id.* SC610.3.2.2.

³³ *Id.* SC610.3.3.1.

³⁴ *Id.* SC610.3.1.

³⁵ *Id.* SC610.3.3.2.

dismissed.³⁶ Given this limitation, administrative dismissal authority is not the authority behind the DOD's use of a fifty-nine-minute rule.

Excused Absence—What the Fifty-Nine-Minute Rule Is

A second category of administrative leave within the DOD is administrative excusal or excused absence.³⁷ The Department of Defense defines an excused absence as “an authorized absence from duty without loss of pay and without charge to other paid leave . . . [that is] part of an employee's basic workday even though the employee does not perform his or her regular duties [T]he authority to grant excused absence must be used sparingly.”³⁸ This absence is distinct from an employee's absence to perform official but non-regular duties away from his or her normal duty location.³⁹ The *DOD Civilian Personnel Manual (CPM)* provides a non-exhaustive list of examples that may qualify for excused absence treatment, including voting and blood donation.⁴⁰ Although a group excusal of employees for fifty-nine-minutes is not among the listed examples,⁴¹ absent other authority, such a provision within the DOD must be a form of excused absence.

The Fifty-Nine-Minute Rule

The fifty-nine-minute rule, or “1-hour power” as it is sometimes called, is not designated as such in any federal, DOD, or Army regulation.⁴² As mentioned at the outset of this article, the fifty-nine-minute rule principally takes two forms: (1) a mechanism to excuse occasional tardiness and brief absences; and (2) a mechanism to authorize the early release of groups of employees on special, infrequent occasions.⁴³ This dichotomy in use contributes to the confusion surrounding the rule's origins and purpose.

The fifty-nine-minute rule purportedly emanates from a provision in the *Code of Federal Regulations (CFR)* that gives agencies the discretion to forgive brief absences when employees otherwise would have to be overcharged leave in minimum increments.⁴⁴ The OPM has provided federal agencies two distinct ways to avoid the inequity of a leave overcharge. First, they could prescribe a minimum leave charge shorter than OPM's one-hour minimum charge.⁴⁵ Second, they could excuse an employee who is “unavoidably or necessarily” absent for less than one hour or tardy for “any adequate reason.”⁴⁶

This OPM rule provides authority to forgive an employee's unplanned failure to report to work on time (the first use of the fifty-nine-minute rule), but that situation obviously differs from a management-initiated, group release of employees who have already reported to work (the second use of the fifty-nine-minute rule). Indeed, either use of the fifty-nine-minute rule may seem so removed from its ostensible origins that one would do well to identify some other authority behind it. After all, the current minimum leave charge for agencies within the DOD can be as low as six minutes.⁴⁷ For the Army, the minimum

³⁶ *Id.* SC610.3.1.

³⁷ See U.S. DEP'T OF DEFENSE, ADMIN. INSTR. 67, LEAVE ADMINISTRATION para. 15 (27 Dec. 1988) [hereinafter DOD ADMIN. INSTR. 67] (using the term, “administrative excusals”). The Administrative Instruction applies to the Office of the Secretary of Defense, the Joint Chiefs of Staff and other activities assigned to Washington Headquarters Service for administrative support. *Id.* para. 2. See also DOD MAN. 1400.25-M, *supra* note 18, SC630.7.

³⁸ DOD MAN. 1400.25-M, *supra* note 18, SC630.7.1; see also DOD REG. 7000.14-R, *supra* note 11, vol. 8, ch. 5, para. 051601. Army definitions are similar. See U.S. DEP'T OF ARMY, PAM. 37-2, TIME AND ATTENDANCE REPORTING FOR THE STANDARD ARMY CIVILIAN PAYROLL SYSTEM para. 4-17 (6 Jan. 1988) [hereinafter DA PAM. 37-2]. These definitions are consistent with Comptroller General definitions. See, e.g., Satwant Singh Bajwa, B-185128, 1975 U.S. Comp. Gen. LEXIS 1478, *1-2 (Dec. 3, 1975).

³⁹ U.S. Dep't of Commerce, Excused Absences, http://ohrm.os.doc.gov/Leave/DEV01_000049.html (last visited Mar. 16, 2006).

⁴⁰ DOD MAN. 1400.25-M, *supra* note 18, SC630.7.4.

⁴¹ *Id.* (listing only common instances).

⁴² See, e.g., DOD ADMIN. INSTR. 67, *supra* note 37, para. 15.2.12.

⁴³ See, e.g., *infra* notes 112, 113, and accompanying text. Weber v. Dep't of Navy, 100 F.M.S.R. 80434 (Jan. 18, 2000).

⁴⁴ 5 C.F.R. § 630.206 (2006). For example, where leave is charged in minimum increments of sixty minutes, an employee who is ten minutes late to work would be overcharged fifty minutes of leave if forced to take leave to cover the tardiness. *But see* 70 Fed. Reg. 1072 (5 Jan. 2005) (indicating a one hour leave charge may soon vanish).

⁴⁵ 5 C.F.R. § 630.206(a).

⁴⁶ *Id.*

⁴⁷ DOD MAN. 1400.25-M, *supra* note 18, SC630.2; see also DOD REG. 7000.14-R, *supra* note 11, vol. 8, ch. 5, para. 050106.

leave charge normally is fifteen minutes.⁴⁸ The fact that a fifty-nine-minute rule survives within the DOD, in spite of reduced minimum leave charges, suggests that it encompasses purposes other than the avoidance of a leave overcharge.⁴⁹ And, it is important to remember that the OPM does not preempt agency and departmental discretion in this area.⁵⁰

It is the broad agency discretion to authorize brief excused absences that probably best explains the current use of the fifty-nine-minute rule. In fact, Comptroller General decisions recognize the use of such discretion in granting excused absences for brief periods, so long as it does not violate a statute or regulation.⁵¹ While agencies are largely free to grant excused absences within those parameters, their internal authority to invoke the rule depends upon authorized instances and proper approval levels.⁵²

Granting Fifty-Nine-Minute Excused Absences to Groups of Employees

Agency regulations often provide for excused absences in specific situations that are typically illustrative not exclusive, and that may vary within an agency or department.⁵³ Thus, a regulation provision that supports early releases under the fifty-nine-minute rule is not critical to the exercise of such releases, but it is also not without precedent. For example, a supplement to the retired *Federal Personnel Manual* (FPM) authorized excused absences for groups of employees for various purposes, as agencies deemed appropriate.⁵⁴ The current *DOD CPM* has no similar provision, but neither does it limit excused absences strictly to individual employees. Further, the *CPM* and other DOD publications affirm the authority to excuse brief absences,⁵⁵ and some DOD components and offices employ an excusal ground of “tardiness and brief absences of periods less than 1 hour” with no further qualifications or limitations.⁵⁶ Thus, the DOD does not foreclose managerial discretion to excuse groups of employees from duty, within this time limit, for most any good reason not covered by other rules.

The Army, of course, is one of the DOD’s subordinate military departments.⁵⁷ While the Army’s regulation for this area is obsolete,⁵⁸ the current (1988) Army pamphlet on point reflects the old FPM guidance that “excused absences are authorized on an individual basis, except where an installation is closed [referring to a dismissal] or a group of employees is

⁴⁸ DA PAM. 37-2, *supra* note 38, para. 2-3c; *see also* PERMISS article, *supra* note 29 (explaining: “the charge is made in ¼ hour multiples unless a different minimum charge is negotiated. . .”).

⁴⁹ An unnamed OPM spokesman was attributed in an article as having explained that this “flexibility is not officially referred to as the ‘59 minute rule,’ but it can be construed from the language of 5 CFR 630.206 under ‘Minimum Charge.’” Kathleen Filipczyk, cyberFEDS@, ‘59 Minute Rule’ Can Be Used for Unexpected Leave (Dec. 15, 2003), available at <http://www.cyberfeds.com/> [hereinafter Filipczyk]. The article continued:

The rule defines the following examples: . . . If an employee is unavoidably absent or tardy for less than one hour, the agency for adequate reason may excuse the employee without charge to leave. Requests for leave within ‘59 minutes’ can encompass reasons for inclement weather and holiday observance or travel. When an employee is granted leave for an unauthorized absence or tardiness, the agency may not require . . . work for any part of the leave period.

Id. Note, though, the article can be misleading in that a provision on “inclement weather and holiday observance or travel” is not found in the text of the CFR rule (or in the summarized LRP Publications version of this article). *See* 5 C.F.R. § 630.206 (2006); LRP Pub., ‘59 Minute Rule’ Can Be Used for Unexpected Leave, FED. HUM. RESOURCES WK. vol. 10, no. 34 (Dec. 22, 2003) (providing a summary of the article).

⁵⁰ *See supra* note 15.

⁵¹ *See, e.g.*, Elmer DeRitter, Jr., B-207996, 1982 U.S. Comp. Gen. LEXIS 40561, *3 (Sept. 28, 1982).

⁵² *See* DOD MAN. 1400.25-M, *supra* note 18, SC630.7.2, SC630.7.4.

⁵³ *See e.g., id.* SC630.7; DOD REG. 5500.7-R, *supra* note 5, paras. 3-300b and c; DOD REG. 7000.14-R, *supra* note 11, vol. 8, ch. 5, para. 0516; DOD ADMIN. INSTR. 67, *supra* note 37, para. 15; AR 690-990-2 (obsolete), *supra* note 11, bk. 610, para. S3-3; DA PAM. 37-2, *supra* note 38, para. 4-17b; U.S. EUROPEAN COMMAND, DIR. 30-12, HOURS OF DUTY para. 10c (15 July 1999); U.S. ARMY IN EUROPE, PAM. 690-630, EXCUSED ABSENCE para. 4 (14 Feb. 2005) [hereinafter USAREUR PAM. 690-630].

⁵⁴ U.S. OFFICE OF PERSONNEL MANAGEMENT, FEDERAL PERSONNEL MAN. SUPPLEMENT 990-2, bk. 630, para. S11-1, *cited in* A Christmas Case, B-215039, 1984 U.S. Comp. Gen. LEXIS 36, *2 (Dec. 24, 1984).

⁵⁵ DOD 7000.14-R, *supra* note 11, vol. 8, ch. 5, para. 051604 (permitting excused absences for “tardiness and brief absences”); DOD MAN. 1400.25-M, *supra* note 18, SC630.7.3.

⁵⁶ DOD ADMIN. INSTR. 67, *supra* note 37, para. 15.2.12.

⁵⁷ 5 U.S.C. §§ 101, 102 (2000).

⁵⁸ AR 690-990-2 (obsolete), *supra* note 11. The Army regulation qualified the *FPM Supplement*’s provision on group release for various reasons by providing that excused absences were “authorized on an individual basis, except where an activity . . . [was] closed or a group of employees on a specific project [was] excused from work (See book 610.S3).” *Id.* para. S11-1. The regulation’s book 610, however, only covered excused absence used for administrative dismissals and while it addressed activity closings it made no mention of, and thus had no applicability to, groups of employees on specific projects. *Id.* paras. S3-1 - S3-3. The term “specific project” was not defined in AR 690-990-2, but perhaps was intended to restrict such group releases.

excused from work for various reasons. . . .”⁵⁹ The pamphlet leaves those reasons to lower echelon discretion, but directs management to “[c]onsult installation regulations for the various types of administrative leave authorized. . . .”⁶⁰ Echoing the CFR provision on excusal of tardiness and brief absences, one on-line source of Army guidance simply provides that agencies “may also excuse employees for *unavoidable* absences of less than one hour [emphasis added]” so long as the employee’s reasons are “acceptable” to management.⁶¹ This guidance might appear to suggest that Army managers are limited in their ability to grant such excusals⁶²—a view of the fifty-nine-minute rule that some non-Army sources also seem to share.⁶³ That guidance, however, is far from exclusive.⁶⁴

This discretion can affect the manner in which the fifty-nine-minute rule is used within a major Army command (MACOM) or other organization. Current guidance within the U.S. Army, Europe, for example, provides excused absence authority for “brief absences (less than one hour)” with no requirement of unavoidability or necessity.⁶⁵ Army regulations do not restrict the latitude that the DOD affords them on this ground,⁶⁶ and that MACOM’s regulation does not restrict the Army’s authorization of group excusals for “various reasons.”⁶⁷ Hence, group excusals for less than one hour are within the MACOM’s discretion. As such, they will be sustained unless they are arbitrary, capricious, an abuse of discretion, or are otherwise unlawful.⁶⁸ If Army installation, MACOM, or subordinate level regulations restrict excused absences, however (e.g., to individual cases only, or to require an unavoidable absence), they arguably prevent group excusals under the fifty-nine-minute rule (even as a locally-authorized holiday good will gesture⁶⁹). Under such restrictions, granting excused absence to an entire office could appear to be an improperly authorized dismissal.

The Merit Systems Protection Board on the Fifty-Nine-Minute Rule

At least one appeal to the U.S. Merit Systems Protection Board (MSPB) has noted the importance of agency regulations in invoking the fifty-nine-minute rule. In January of 2000, the administrative judge (AJ) in *Weber v. Dep’t of Navy*⁷⁰ considered an appellant’s claim that he was not selected for promotion in retaliation for his Whistleblower’s Protection Act disclosures.⁷¹ Among other issues (principally, his non-selection for promotion), the appellant had disclosed that his third-line supervisor allowed a group of employees who had worked the Friday after Thanksgiving to go home fifty-nine minutes early, but had denied this benefit to others allegedly in violation of 5 U.S.C. §§ 2301 and 2302.⁷² The appellant had not even been at work that day but claimed that this selective excusal was an abuse of authority.⁷³

⁵⁹ DA PAM. 37-2, *supra* note 38, para. 4-17.

⁶⁰ *Id.*

⁶¹ PERMISS article, *supra* note 29 (asserting that excused absence normally addresses individual cases).

⁶² For example, focusing on one use of fifty-nine-minute authority can imply there is no other use. *See supra* note 43 and accompanying text.

⁶³ *See, e.g.,* Filipczyk, *supra* note 49 (noting that “[h]oliday travel, unexpected family emergencies, and extreme weather can require employees to request unplanned leave. In cases such as these, supervisors may grant the ‘59 minute rule,’ but elaborating that the rule “can be used for all employees as long as the reasons are justifiable. Cases of occasional tardiness to work, for example, due to a flat tire or problem at home can also be covered by the rule. . . . And it is best if used sparingly to avoid overuse by employees.

⁶⁴ The PERMISS guidance implies that other uses can exist. *See supra* note 61 and accompanying text (employing phrases such as “may also excuse employees for”).

⁶⁵ USAREUR PAM. 690-630, *supra* note 53, para. 4.

⁶⁶ *See generally* DA PAM. 37-2, *supra* note 38.

⁶⁷ *See generally* USAREUR PAM. 690-630, *supra* note 53.

⁶⁸ 5 U.S.C. § 706 (2000); *see, e.g.,* George J Keenan, B-209285, 1983 U.S. Comp. Gen. LEXIS 1471 (Mar. 22, 1983) (applying this standard in an excused absence context).

⁶⁹ GAO PERSONNEL LAW MAN., *supra* note 15, tit. II, ch. 5:0.2, para. B 12 (allowing excused absence for group release as a holiday good will gesture, without any specific agency illustrative provision). *But see* U.S. EUROPEAN COMMAND, DIR. 30-12, HOURS OF DUTY para. 10c (15 July 1999) (rebuking use of excused absence solely to supplement leave, and defining the absence as one “granted to individual employees”); *see also* U.S. DEP’T OF TREASURY, INTERNAL REVENUE MAN. ch. 600, sec. 6060.1.8.8 (1 Jan. 2003) (restricting releases of “all IRS employees, such as . . . on the eve of a holiday” to the Commissioner or his agent, but allowing supervisors authority to grant up to fifty-nine minutes of administrative time off “in recognition of extra effort or a particular personal circumstance” of an employee).

⁷⁰ *Weber v. Dep’t of Navy*, 100 F.M.S.R. 80434 (Jan. 18, 2000).

⁷¹ *Id.* at intro.

⁷² *Id.* at Analysis and Findings, para. 3.

⁷³ *Id.* para. 8.

The record showed that only those employees who had worked assembling workstations on the Friday after Thanksgiving received the excused absence.⁷⁴ The AJ found that, even if proven, the allegations would not be protected under the Act, stating that: “The appellant . . . conceded that the ‘fifty-nine-minute’ rule is lawful. He simply claim[ed] that it [had been] unfairly applied. However, none of the statutory provisions . . . proscribe or limit the manner in which a supervisor applies such a rule.”⁷⁵ In examining 5 U.S.C. § 2301, the AJ observed that the appellant had never claimed that political affiliation or prohibited discrimination were factors in granting the fifty-nine-minute rule.⁷⁶ Finally, regarding 5 U.S.C. § 2302, the AJ concluded, that the record did not evince that the supervisor’s action “violated any other law, rule, regulation, agency policy, internal guidelines or work practices”⁷⁷ thus recognizing that management’s legitimate use of the fifty-nine-minute rule need not be limited to situations of individual or unavoidable absence.⁷⁸

The Comptroller General on Group Releases

A more eloquent administrative decision supporting the use of excused absence in conjunction with a holiday, for an ostensibly longer period, is the festive, 1984 Comptroller General decision, *A Christmas Case*.⁷⁹ “On . . . the last workday before Christmas, the Installation Commander of Fort Sheridan, Illinois, released the Installation’s civilian employees for the afternoon as a “holiday good-will gesture.”⁸⁰ In a move that could have turned Ebenezer Scrooge, Grinch-green with envy:

the Civilian Personnel Officer found the action to be a humbug stating that the Commander had no authority to release employees as a holiday good-will gesture [and that this] . . . ‘contravened relevant provisions of the Federal Personnel Manual Supplement [since] . . . if an employee’s absence does not clearly serve the best interests of the service, as compared to personal interests of the employee . . . [it] must be charged to the appropriate type of leave.’⁸¹

The Comptroller General noted that the *FPM Supplement* (then in effect) controlled the issue, absent intermediate restrictions.⁸² Significantly, the decision emphasized the *FPM Supplement*’s provision that excused absences were “‘authorized on an individual basis, except where an installation [was] closed, or a group of employees [was] excused from work for various purposes.’”⁸³ The Comptroller General explained in conclusion:

The controlling issue here is not the prudence . . . but rather, the validity and effect of that order. We find nothing in the order to indicate that it was arbitrary . . . or . . . otherwise contrary to law or specific regulation. We are aware of some precedent for such a practice in both the public and private sectors. Accordingly, we are upholding the Installation Commander’s exercise of the discretionary authority It follows that the employees in question are entitled to administrative leave—everyone of them.⁸⁴

Current GAO guidance evinces the continuing validity of this interpretation of authority to grant administrative leave.⁸⁵

⁷⁴ *Id.*

⁷⁵ *Id.* para. 6.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*; see also *Tague v. Dep’t of Navy*, AT-0752-02-0422-I-1, 103 LRP 916, Analysis and Findings (Dec. 30 2002) (reflecting an appellant’s guidance to subordinate supervisors that employees “may not leave except on the hour unless authorized under the 59 minute rule”) (on file with author). The MSPB’s initial decision in that case from the Naval Station at Pascagoula, MI, elaborated: “under the ‘59 minute rule,’ a police officer could be permitted up to 59 minutes of paid time off the clock without having to utilize any leave.” *Id.* note 4.

⁷⁹ *A Christmas Case*, B-215039, 1984 U.S. Comp. Gen. LEXIS 36 (Dec. 24, 1984).

⁸⁰ *Id.* at *1.

⁸¹ *Id.* at *1-2.

⁸² *Id.* at *3 (observing that because the Army has not specifically regulated administrative leave, the *FPM Supplement*’s examples had general applicability). “However, this listing [of examples] is not exclusive nor does it purport to usurp the discretion of agency heads or installation commanders to make grants of short periods of administrative leave in appropriate cases.” *Id.*

⁸³ *Id.* at *2.

⁸⁴ *Id.* at *3-4.

⁸⁵ GAO PERSONNEL LAW MAN., *supra* note 15, tit. II, ch. 5:0.2, para. B 12.

The Federal Labor Relations Authority (FLRA) on Early Releases for Special Occasions

Collective bargaining agreements also may specifically address and restrict the use of the fifty-nine-minute rule.⁸⁶ The wide discretion afforded to agencies in determining the lawful purposes for such absences, was pertinently illustrated in the 1996 FLRA decision in *Dep't of Veterans Affairs Medical Center Asheville, North Carolina and AFGE Local 446, AFL-CIO*.⁸⁷ In that case, the medical center unilaterally discontinued a past practice of granting employees four hours of administrative leave each year for their birthdays.⁸⁸ The union filed an unfair labor practice charge,⁸⁹ the agency admitted it had failed to meet its obligation to negotiate the impact and implementation of the discontinuation⁹⁰ and focused on the legality of the practice, with the nature of the remedy being the only issue in dispute.⁹¹

Speaking against a status quo ante remedy, the agency argued that its past practice was illegal and thus could not be given retroactive effect since, among other points, excused absence was not historically granted on a routine basis and was intended for purposes such as voting, registering to vote, and excusing tardiness.⁹² Further, the agency argued, employee birthdays failed to meet the criteria in an agency directive that prescribed the use of excused absences for activities considered to substantially benefit the agency in accomplishing its mission or functions, or that clearly enhanced the employees' abilities to perform in their positions.⁹³ Finally of note, the agency argued that the practice was tantamount to granting holidays, which the agency had no local authority to do.⁹⁴

The Administrative Law Judge (ALJ), nonetheless, found the agency's arguments did not establish that the practice was illegal.⁹⁵ The judge observed that whether an activity would benefit an agency mission or enhance an employee's ability to perform was "not set in concrete," but remained a subjective determination.⁹⁶ The ALJ granted a summary judgment finding a violation of 5 U.S.C. §§ 7116(a)(1) and (5) and ordered a status quo ante remedy, but limited its retroactivity on equitable grounds to the calendar year of the decision.⁹⁷ The agency filed exceptions for FLRA consideration.⁹⁸

Among other issues, the agency again argued that a status quo ante remedy was improper where a past practice had been illegal, emphasizing that the *FPM* and *FPM Supplement* provided discretion to grant administrative leave "only in circumstances where there [was] a Government or civic interest."⁹⁹ Although noting that the relevant *FPM* provisions had

⁸⁶ See, e.g., Labor Agreement—American Federation of Government Employees, Local 1869—Dep't of Air Force, Charleston Air Force Base, South Carolina, sec. 20.2 (n.d.), available at [http://www.cyberfeds.com/CF3/index.jsp?contentId=5006&chunkid=176950&query=\(\(59+MINUTE+RULE\)\)\)&chunknum=1&topic=Main&listnum=0&offset=2](http://www.cyberfeds.com/CF3/index.jsp?contentId=5006&chunkid=176950&query=((59+MINUTE+RULE)))&chunknum=1&topic=Main&listnum=0&offset=2) (last visited June 5, 2005) (limiting the use of the "59 minute rule" to situations of "unavoidable tardiness and/or brief absence" and restricting excusal consideration to "rare and unusual" circumstances) (on file with author). But see Stephen Weeks, President, American Federation of Government Employees, Local 1917, N.Y. District, *JFK Airport Notice to All*, <http://www.local1917.org/id25.htm> (last visited Aug. 12, 2005) (explaining management's error in not letting some customs officers leave work fifty-nine-minutes early (or take a one-hour lunch break, either), the article provided: "They couldn't understand where we got this. I guess they forgot that when they placed Treasury employees on our line . . . [and when those employees were not needed] for overtime, they were allowed to leave 59-minutes early because they had the 59-minute rule (this also takes place in NJ and Miami).") (last visited June 5, 2005) (on file with author).

⁸⁷ Dep't of Veterans Affairs Med. Ctr. Asheville, NC & AFGE Local 446, AFL-CIO, 1996 FLRA LEXIS 79 (July 19, 1996). Agencies or organizations that do not specifically address the rule and then unilaterally seek to restrict their established use of it, risk unfair labor practice charges. See, e.g., U.S. Customs Serv., Customs Mgmt. Ctr., Miami, FL and NTEU, Chapter 137, 56 F.L.R.A. 809 (2000) (affirming the past practice of granting administrative leave for employee participation in athletic competitions); Dep't of Agriculture, Forest Service, Arlington, VA and NFFE Forest Serv. Council, 96 F.S.I.P. 144 (Dec. 18, 1996) (affirming the past practice of granting administrative leave to annually celebrate "Three Kings Day" on 6 January).

⁸⁸ Dep't of Veterans Affairs Med. Ctr. Asheville, NC & AFGE Local 446, AFL-CIO, 1996 FLRA LEXIS 79, at *1-2.

⁸⁹ *Id.* at *1.

⁹⁰ *Id.* at *37-38.

⁹¹ *Id.* at *38.

⁹² *Id.* at *38-39.

⁹³ *Id.* at *39.

⁹⁴ *Id.*

⁹⁵ *Id.* at *39-40.

⁹⁶ *Id.* at *40 (adding that, to the ALJ's knowledge, other departments and agencies regularly granted excused absence for occasions such as Christmas parties, awards ceremonies, welcoming a new official, and the like, none of which were specifically enumerated in the agency directive and yet, no matter how another might disagree, none of which were unlawful). Note that the use of administrative leave referenced here was ostensibly to facilitate attendance at these activities, not necessarily to leave work early after their conclusion.

⁹⁷ *Id.* at *45-46.

⁹⁸ *Id.* at *1.

⁹⁹ *Id.* at *5. The agency also argued that the retroactive crediting of leave would violate management's right to assign work because it eliminates their authority to approve or disapprove leave. *Id.* at *6. Due to the ultimate disposition of remedy, the Authority did not further address this issue. *Id.* at *19. Generally, management's right to assign work is not affected by administrative leave provisions that require supervisory determinations that such leave will

been abolished as of 31 December 1994,¹⁰⁰ the Authority found that the agency “had discretion while the *FPM* was in effect to grant brief periods of excused absence in connection with employee birthdays and [especially significant to our discussion, there existed] no basis argued or apparent on which to conclude that such discretion was eliminated by abolishment of the *FPM*.”¹⁰¹ In dismissing the agency’s *FPM*-related concerns, the Authority noted that the agency had pointed to “no specific portion of the *FPM* that clearly established that the practice was unlawful” and the fact that “employee birthdays” was not listed among *FPM* examples was not dispositive of agency discretion to grant brief absences for birthdays.¹⁰²

Supporting its finding that administrative leave could be used for such purposes, the authority cited *A Christmas Case*,¹⁰³ noting that a dispositive factor in such circumstances was whether the agency had originally approved or disapproved the leave in issue.¹⁰⁴ The Authority acknowledged that it had on occasion previously held that administrative leave “must bear some relationship to the situations described in subchapter 11 [of *FPM* Chapter 630],” and that such leave was “restricted to the circumstances described in the *FPM*.”¹⁰⁵ The Authority then broke from this precedent concluding: “we find . . . no basis in either the *FPM* or Comptroller General decisions interpreting the *FPM* provisions to limit the ability of agencies to determine the appropriate uses of administrative leave. Authority decision to the contrary will no longer be followed.”¹⁰⁶

The authority thus sustained the practice of granting eight hours of administrative leave for an employee’s birthday as lawful.¹⁰⁷ Similar to the Comptroller General’s approach in *A Christmas Case*, the Authority here distanced its finding of legality from any endorsement of management’s actions. The Authority cautioned that its conclusion should not be misconstrued as a finding that the practice of granting administrative leave for employee birthdays was prudent.¹⁰⁸ The Authority ordered, among other items, that the agency cease and desist from unilaterally discontinuing the practice of granting employees administrative leave for their birthdays and, upon union request, that it bargain concerning the discontinuation of the practice and retroactively apply the results.¹⁰⁹

Because a practice of releasing employees from duty fifty-nine-minutes early on various appropriate occasions obviously is not unlawful,¹¹⁰ an agency with a history of relaxed fifty-nine-minute use would face similar difficulties in any unilateral

not interfere with workload demands. National Treasury Employees Union and U.S. Dep’t of Treasury, U.S. Customs Serv., Wash., D.C., 1999 FLRA LEXIS 223, *13-15 (Dec. 24, 1999).

¹⁰⁰ Dep’t of Veterans Affairs Med. Ctr. Asheville, NC and AFGE Local 446, AFL-CIO, 1996 FLRA LEXIS 79, at *5.

¹⁰¹ *Id.* at *9. The general counsel noted that the respondent agency “offered no case law, rule, or regulation that prohibit[ed] it from exercising its discretion to grant a short period of administrative leave in connection with employee’s birthdays.” *Id.* at *7.

¹⁰² *Id.* at *10 (holding “the result we reach in this case would be the same regardless of whether the *FPM* was applied”).

¹⁰³ See, e.g., *supra* note 84 and accompanying text.

¹⁰⁴ Dep’t of Veterans Affairs Med. Ctr. Asheville, NC and AFGE Local 446, AFL-CIO, 1996 FLRA LEXIS 79, at *11.

¹⁰⁵ *Id.* at *14.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at *8-15. *But see id.* at *26 (disagreeing with the validity of the practice, Member Armendariz, in a separate opinion, explained that under the *FPM* an agency may grant administrative leave in circumstances which should “(1) be directly related to the agency’s mission; (2) enhance the professional development or skills of employees in their current position; or (3) be officially sponsored or sanctioned by the agency head.”). Member Armendariz would have concluded the practice of granting four hours of administrative leave for employee birthdays was not authorized by the *FPM*, and would have continued to follow Authority decisions along those lines. *Id.* at *29-30.

¹⁰⁸ *Id.* at *15 (footnoting that four hours per birthday was consistent with the *FPM* requirement that excused absences be granted for brief periods of time, citing AFGE, AFL-CIO, Local 3804 and FDIC, Madison Region, 21 F.L.R.A. 870, 898 (May 19, 1986) wherein a provision that each employee of a bargaining unit would receive eight days of official time to use as personal days, at their discretion was inappropriate given the stated purpose). The cited decision continued:

the Comptroller General has approved agency grants of approximately five (5) hours of administrative leave for an employee to rest after prolonged and difficult travel, 55 Comp. Gen. 510 (1975), and eight (8) hours for an employee to locate suitable housing in connection with an extended temporary assignment, Comptroller General Decision B-192258 (September 25, 1978), both of which were work-related situations. The Authority has also found negotiable a proposal which would have required authorization of a maximum of thirty (30) minutes of administrative leave per pay period for tardiness (that is, a maximum of 13 hours a year). . . . Conversely, the Comptroller General has held that a grant of administrative leave for excess travel time is inappropriate where the excess time taken is attributable to an employee’s delay for personal reasons or as a matter of personal convenience. 56 Comp. Gen. 865, 868-69 (1977). Moreover, the Comptroller General refused to question an agency’s denial of eight (8) hours of administrative leave to an employee who, as the elected chief of a local all volunteer fire department, participated in fighting a fire and was absent from duty for that amount of time. 54 Comp. Gen. 706 (1974).

AFGE, AFL-CIO, Local 3804 and FDIC, Madison Region, 1986 FLRA LEXIS 454, *56-58 (May 19, 1986).

¹⁰⁹ Dep’t of Veterans Affairs Med. Ctr. Asheville, NC and AFGE Local 446, AFL-CIO, 1996 FLRA LEXIS 79, at *20.

¹¹⁰ See, e.g., *Weber v. Dep’t of the Navy*, 100 F.M.S.R. 80434 (Jan. 18, 2000).

revision of its policy regarding that form of excused absence. Nevertheless, excused absences for brief periods on special, infrequent occasions can be critical to morale. In overseas areas, threat risks and operational difficulties can require managers to exercise a heightened awareness of employee well being to ensure effective operations.¹¹¹ In management's discretion, this may entail greater use of the fifty-nine-minute rule for early releases. Across the DOD, such discretion may result in some organizations invoking the rule more liberally,¹¹² while others take a more conservative approach.¹¹³

Who May Grant Time Off under the Rule?

The DOD CPM states that excused absences should be delegated to the lowest practical level where the "budgetary and mission impact of excused absence decisions can be fully realized."¹¹⁴ Accordingly, absent other restrictions, first line supervisors may grant excused absences, to include fifty-nine minute excusals, to their qualifying subordinates. Army supervisors have long enjoyed this authority.¹¹⁵

Who May Receive Time Off under the Rule?

Thus far, this article has discussed conventional civil service employees receiving time off under the fifty-nine-minute rule;¹¹⁶ however, numerous other individuals work in federal government facilities, not all of whom may be eligible for a fifty-nine-minute excusal. Government contractor employees, nonappropriated fund employees, and overseas local national (LN) employees require further examination.

Contractor employees are not U.S. Government employees.¹¹⁷ Their terms and conditions of employment are established in contracts, not under federal employment law.¹¹⁸ Federal supervisors may not grant excused absences to a private firm's employees.¹¹⁹ Many of the same concerns that surround contractor participation in agency office parties or unit-level activities (e.g., organization days) arise in excused absence situations.¹²⁰ This is a case where "no good deed goes

¹¹¹ Force protection and ordinary living concerns are often exacerbated overseas. See, e.g., USAREUR PAM. 690-630, *supra* note 53, para. 4b(15) (permitting, for example, excused absence for a German court summons, similar to 5 U.S.C. § 6322, but based on consideration of host nation relations). An occasional hour off to run errands, for example, can avoid misuse of eight hours of sick leave.

¹¹² For example, the USAREUR Civilian Personnel Directorate observed "guidance . . . does not specifically address . . . early release at the end of the day for special occasions. There is no prohibition against granting these . . . absences. Excused absences less than one hour have been long-standing agency practices . . . based upon the best interests of the organization and their employees." E-mail from Chief, Program Integration Branch, Civilian Personnel Directorate, U.S. Army, Europe and 7th Army, to author (15 Dec. 2000) (on file with author). Similarly, the Defense General Supply Center permitted supervisors to excuse employee absences up to 59 minutes if it was "in the best interest of the Government to do so." M.E. Smith, B-175627, 1972 U.S. Comp. Gen. LEXIS 2149, *7 (July 5 1972). Excused absences are not to be granted where paid leave is appropriate. See, e.g., USAREUR PAM. 690-630, *supra* note 53, para. 4b; AR 690-990-2 (obsolete), *supra* note 11, bk. 630, para. S11-5a.

¹¹³ See U.S. Army Medical Command, Civilian Personnel Division, Ft. Sam Houston, TX, *Proper Time Keeping*, <http://civpers.amedd.army.mil/TIME.HTM> (last visited May 4, 2005) (noting that timekeeping mistakes include "improperly using the so-called '59 minute rule' . . . [which] is not intended . . . for group absences."); see also U.S. Navy, Naval Support Activity, Human Resources Office, <http://www.lamadd.navy.mil/> (click on HRP, Services, FAQ On Leave) (last visited May 4, 2005) (cautioning that the fifty-nine-minute rule is not intended to "create 'an hour off.'"); U.S. Navy, Naval Postgraduate School, *Leave Information, Excused Absence*, <http://www.nps.navy.mil/Code22/leave.htm#Excused%20Absence> (last updated 8 May 2000) (warning that "this type of excused absence may not be combined with breaks, lunch periods, or any other type of leave."). Ft. Hood Labor Counselor, *Top Ten Legal Landmines for Supervisors of Civilian Employees* para. 2 (3 Mar. 2003), <http://pao.hood.army.mil/corpssja/top10-supervisor-landmines.htm> (listing the fifty-nine-minute rule second only to Weingarten rights on the landmine list and noting that the rule is "typically used at the end of the duty day before a holiday.") (on file with author).

¹¹⁴ DOD MAN. 1400.25-M, *supra* note 18, SC630.7.2.

¹¹⁵ AR 690-990-2 (obsolete), *supra* note 11, bk. 630, para. S11-1; DA PAM. 37-2, *supra* note 38, para. 2-5.

¹¹⁶ *Army Regulation 690-990-2* contained Book 610 on administrative dismissal and Book 630 on excused absence. Book 610, however, included broad statements on excused absence eligibility. These statements (e.g., limiting excused absence for daily, hourly and piecework employees to those with appointments exceeding ninety days, excluding experts and consultants from eligibility, and specifying excused absence duration) applied to excused absence as a dismissal. AR 690-990-2 (obsolete), *supra* note 11, bk. 610, para. S3-3. This is clear from the numbered book in which they appear and from controlling OPM provisions. See, e.g., 5 C.F.R. §§ 610.303; 610.304 (2006).

¹¹⁷ 5 U.S.C. § 2105 (2000).

¹¹⁸ See, e.g., RESTATEMENT (SECOND) OF CONTRACTS § 5 (1981).

¹¹⁹ U.S. Dep't of Defense, Standards of Conduct Office, Office of General Counsel, *Holiday Guidance on Partying with Contractors and Supervisors* (Dec. 7, 1999) (noting that "[t]he Government usually may not reimburse a contractor for its employees' morale and welfare expenses. The contractor has to decide whether to let its employees . . . forego payment . . . [or require them to work]," and advising prior consultation with the contracting officer and ethics counselor).

¹²⁰ Unscheduled contractor employee departures can interfere with contract obligations. Also:

unpunished.”¹²¹ Not only may the contractor dock the pay of improperly released workers, the government may incur liability for consequent contractor delays and may hold agency supervisors accountable for any resulting unauthorized expenditure of appropriated funds.¹²² Furthermore, the need to facilitate contractor support, and to verify that it is being provided, can necessitate that some federal employees also remain at the work site rather than leaving it fifty-nine minutes early.

Nonappropriated fund (NAF) employees are federal employees, but they are excluded from most of the laws administered by the OPM.¹²³ Consequently, in accordance with DOD and subordinate component regulations, NAF employees may enjoy excused absences on a less restrictive basis than appropriated fund employees.¹²⁴ Nevertheless, within the DOD, supervisors must also exercise this authority sparingly.¹²⁵

Local national employees often are not considered federal employees within the meaning of 5 U.S.C. § 2105, but their federal employment is statutorily authorized.¹²⁶ The DOD contemplates two systems of foreign national employment overseas: indirect hire and direct hire systems.¹²⁷ The host nation is the legal employer of LN employees in the former system,¹²⁸ while U.S. Forces are their legal employer in the latter system.¹²⁹ Employment conditions for LN employees normally are founded in treaties, agreements, or contracts with local unions.¹³⁰ Thus, one must consult these documents and corresponding regulations to determine the scope of excused absence authority for LN employees.¹³¹ Other restrictions may exist. For example, a DOD regulation provision on holidays in foreign areas cautions that “employees may not be relieved of duty without charge to leave or loss of pay on a day that is not their ‘official’ holiday, unless the absence is due to circumstances that prevent work”¹³² This is consistent with DOD’s preclusion on the use of administrative dismissal to effect holidays, activity down days, or training days.¹³³ Thus, local regulations may provide for such holiday excusals when circumstances such as activity closings, critical personnel disruption due to observance of holidays, or emergency conditions

We are creating an expectation that the contractor’s employees will be paid for the day as if they had worked We cannot certify we received contractually required services We interject ourselves into the contractor’s relationship with its employees[and] We could be placed in a position of forcing the contractor to give its employees a day off without pay. . . .

U.S. Army Materiel Command, Chief, General Law/Intellectual Property Law Division, *Ethics Advisory 99-02—Organization Days* (1999), available at <http://www.redstone.army.mil/legal/docs/orgdays.rtf>.

¹²¹ Clare Booth Luce, 1903-1987, http://en.wikipedia.org/wiki/Clare_Boothe_Luce.

¹²² 31 U.S.C. §§ 1341, 1350.

¹²³ 5 U.S.C. § 2105(c).

¹²⁴ DOD MAN. 1400.25-M, *supra* note 18, SC1406.2.1.6; U.S. DEP’T OF ARMY, REG. 215–3, NONAPPROPRIATED FUNDS PERSONNEL POLICY paras. 5-45, 5-46 (29 Aug. 2003) (providing that managers must determine appropriate excused absence situations and administer them impartially); *see also* U.S. Office of Personnel Management, Federal Wage System Nonappropriated Fund Man. S5-15, <http://www.opm.gov/oca/wage/nafnew/in-dex.asp> (last visited Mar. 9, 2006) (listing examples of instances appropriate for administrative leave).

¹²⁵ DOD MAN. 1400.25-M, *supra* note 18, SC1406.2.1.6.

¹²⁶ *See, e.g.*, 22 U.S.C. § 3968(b); 10 U.S.C. § 1584.

¹²⁷ DOD MAN. 1400.25-M, *supra* note 18, SC1231.4.2.

¹²⁸ *Id.* SC1231.4.2, SC1231.4.2.2.

¹²⁹ *Id.* SC1231.4.2, SC1231.4.2.1.

¹³⁰ *Id.* SC1231.3.1, SC1231.3.2.

¹³¹ *See, e.g.*, U.S. ARMY EUROPE, PAM. 690-60, TARIFF AGREEMENTS THAT APPLY TO PERSONS EMPLOYED BY THE U.S. FORCES IN GERMANY (ENGLISH TRANSLATION) art. 26, para. 2(a) (8 Mar. 2004) (translating The Collective Tariff Agreement for the Employees of the Sending States Forces in the Federal Republic of Germany, of 16 December 1966 from German to English). The Tariff Agreement provides for LN pay where “reasons for non-productive time are beyond the employee’s influence.” *Id.* art. 28. Specific excusal grounds are also furnished.

¹³² DOD MAN. 1400.25-M, *supra* note 18, SC1261.3.1.3; *see also* AR 690-990-2 (obsolete), *supra* note 11, bk. 610, para. S3-3f(2)(b) (providing, prior to the regulation’s expiration, that non-U.S. citizens employed outside the United States are “not entitled to the holiday benefits and excused leave provided for citizen employees”). *But see* Dep’t of Agriculture, Forest Serv., Arlington, VA and NFFE Forest Serv. Council, 96 F.S.I.P. 144 (Dec. 18, 1996) (ordering the agency to continue grants of administrative leave to its employees to celebrate on 6 January each year, since “Three Kings Day” was one of the most important annual events in Puerto Rico and the agency had demonstrated no need to change its past practice).

¹³³ *See supra* note 33 and accompanying text.

may prevent the performance of work.¹³⁴ Local regulations also often provide examples of other appropriate instances of administrative leave for LN employees.¹³⁵

Miscellaneous Concerns

The fact that excused absence normally is “considered part of an employee’s basic workday”¹³⁶ precludes the combination of the fifty-nine-minute rule with breaks, lunch periods, and certain leave situations.

In general, two types of breaks can exist in a statutory workday: paid and unpaid breaks.¹³⁷ If an unpaid break is extended beyond its established duration, the total paid hours worked in the day must be extended to complete a forty-hour statutory workweek.¹³⁸ The broad authority in 5 U.S.C. §§ 301, 6101, and 6102, however, allows agencies to grant brief, paid rest periods when beneficial or essential to the efficiency of federal service.¹³⁹ These brief rest periods (e.g., fifteen minutes per morning and afternoon), if granted, are considered part of the employee’s basic workday.¹⁴⁰ Hence, there is no accrual of unused breaks. Because an employee is in a pay status during a rest period he generally may not depart the worksite.¹⁴¹ Therefore, it would be improper to authorize a fifteen-minute break immediately before scheduled leave.¹⁴² This could create duty-hour validation problems.¹⁴³ Similarly, it is inappropriate to combine a break with a fifty-nine-minute excused absence.¹⁴⁴

The distinction between lunch breaks and rest periods is clear. Time spent eating is generally not remunerable and is not considered part of the basic workday unless the employee is required to perform substantial official duties during that period.¹⁴⁵ Unpaid lunch breaks are generally limited by statute to no more than one hour per day.¹⁴⁶ Paid breaks may not be combined with unpaid lunch to increase lunchtime available, because these two types of breaks are authorized under different laws and are not compatible.¹⁴⁷ Thus, it is improper to approve a fifteen-minute break immediately before an unpaid lunch break.¹⁴⁸ Extending the unpaid lunch with a paid, excused fifty-nine-minute absence similarly would be improper.¹⁴⁹

¹³⁴ DOD MAN. 1400.25-M, *supra* note 18, SC1261.3.3; *see also* AR 690-990-2 (obsolete), *supra* note 11, bk. 610, para. S3-3f(2)(b). This Army regulation provision pertains to dismissal situations and not specifically to other authorized excused absences.

¹³⁵ U.S. ARMY EUROPE, REG. 690-69, LOCAL NATIONAL EMPLOYMENT POLICY IN THE FEDERAL REPUBLIC OF GERMANY, TARIFF IMPLEMENTATION AND OVERTARIFF CONDITIONS para. 11b (1 Sept. 1994) (providing “time off will be approved on the basis of equal treatment of all employees . . . at a given location”).

¹³⁶ DOD MAN. 1400.25-M, *supra* note 18, SC630.7.1. *But see, e.g.*, 5 C.F.R. § 551.401(b) (2006) (explaining that under the Fair Labor Standards Act, for employees defined in 5 U.S.C. § 5541(2), paid absences are not considered hours of work for determining overtime). *See* U.S. DEP’T OF JUSTICE, UNITED STATES ATTORNEYS’ PROCEDURES, USAP 3-4.630.001(M), EXCUSED ABSENCE (ADMINISTRATIVE LEAVE) (Sept. 1, 2001) (providing, excused absence is not official duty and is not covered by Office of Workers’ Compensation Programs or the Federal Tort Claims Act, however, excused absence for disciplinary/adverse actions reasons or pending investigations is covered); *see also* U.S. Dep’t of Commerce, *Excused Absences*, http://ohrm.doc.gov/handbooks/leave/excused_absences.htm (last visited May 4, 2005) (specifying that “[a]n employee, while on excused absence, is not acting within the employer-employee relationship. . .”).

¹³⁷ 5 U.S.C. § 6101 (2000); 5 C.F.R. § 610.121 (2006); *see also* Decision of the Comptroller General, B-190011, 1977 U.S. Comp. Gen. LEXIS 1664, *9-10 (Dec. 30, 1977).

¹³⁸ Decision of the Comptroller General, B-190011, 1977 U.S. Comp. Gen. LEXIS 1664, *9-10.

¹³⁹ Decision of the Comptroller General, B-166304, 1969 U.S. Comp. Gen. LEXIS 2819, *2 (Apr. 7, 1969).

¹⁴⁰ *Id.*

¹⁴¹ Decision of the Comptroller General, B-190011, 1977 U.S. Comp. Gen. LEXIS 1664, *8.

¹⁴² *Id.* at *10-11.

¹⁴³ *Id.*

¹⁴⁴ *See* Filipczyk, *supra* note 49.

¹⁴⁵ *Ayres v. United States*, 186 Ct. Cl. 350, 355, 359-60 (1968); *Bantom v. United States*, 165 Ct. Cl. 312 (1964); Chairman, U.S. Civil Serv. Comm’n, B-149986, 42 Comp. Gen. 195 (1962). Duties over lunch can require payment of overtime. *See* Decision of the Comptroller General, B-166304, 1969 U.S. Comp. Gen. LEXIS 2819, *2-3.

¹⁴⁶ 5 U.S.C. § 6101 (a)(3)(F) (2000); 5 C.F.R. § 610.121(a) (2006); *see also* Decision of the Comptroller General, B-190011, 1977 U.S. Comp. Gen. LEXIS 1664.

¹⁴⁷ AFGE Local 3231 and DHHS, 17 F.L.R.A. 554, 556 (1985), *rev’d. and remanded* 791 F.2d 979, (D.C. Cir., 1986), *reconsidered in* AFGE Local 3231 and DHHS, 25 F.L.R.A. 600 (1987); *see also* St. Lawrence Seaway Dev. Corp., B-217578, 1986 U.S. Comp. Gen. LEXIS 1462 (Feb. 27, 1986); Decision of the Comptroller General, B-190011, 1977 U.S. Comp. Gen. LEXIS 1664.

¹⁴⁸ Decision of the Comptroller General, B-190011, 1977 U.S. Comp. Gen. LEXIS 1664, *10.

¹⁴⁹ *See* Filipczyk, *supra* note 49.

Agency authority to establish lunch breaks and rest periods is subject to review where the expenditure of public funds is involved.¹⁵⁰

As discussed above, the Comptroller General has determined that paid duty time on rest breaks cannot be tacked onto periods of other scheduled leave at the end of a workday.¹⁵¹ An early departure obtained by adding break time to scheduled leave at the end of a day does not satisfy the time and attendance reporting requirements for an employee to be credited with having worked a full administrative work week.¹⁵² This decision does not prevent a combination of excused absence at the end of one day with holiday leave on the next, though agency rules may limit such use for ethical reasons.¹⁵³ Bear in mind, though, that any excused absence must still be accounted for properly on time and attendance reports.¹⁵⁴

So, Would a DOD Supervisor Really Go to Jail for Granting the Shop Sixty Minutes Off?

Reference to a “fifty-nine-minute rule” regarding early dismissals is a bit misleading. It is at least partially a practice more than a rule to begin with, and its purpose varies among organizations.¹⁵⁵ Even its time designation is a misnomer.¹⁵⁶ Agency minimum leave charges (e.g., of six or fifteen minutes) would force a rounding-off of the employee’s time card to sixty minutes, when the rule is exercised. Moreover, there is no set time limitation for such excused absences when they are not, for example, used to excuse tardiness in reporting to work. The time limitation is more a matter of prudence. The Comptroller General’s *Christmas Case* makes no mention of time for that particular group release other than for the afternoon, but rather, it validates the existence of local discretion to grant brief excused absences that reflect public and private sector practices.¹⁵⁷ The practice at issue there (granting time-off at Christmas) was amply supported. The President, for example, authorized most of the federal executive branch workforce an entire day of excused absence on the day after Christmas in 2003,¹⁵⁸ and similar half-day excusals on Christmas Eve, tied into authority for holiday leave, have been a sporadic tradition.¹⁵⁹ Similarly, the FLRA decision in *Department of Veterans Affairs Medical Center Asheville* exceeded fifty-nine minutes, though the impact (absent multiple, concurrent birthdays) was limited to individuals rather than groups. But, occasional good will gesture releases may be granted, as well, under fifty-nine-minute authority.¹⁶⁰

Thus, while excused absence authority need not be exercised in connection with a flat tire on the way to work, or as a method of avoiding minimum leave charges, an expansive interpretation and application of the rule’s origins (from forgiving tardiness and brief absences for any acceptable reason to granting brief absences for any acceptable reason) coupled with an element of frugality (in terms of brevity of absence and regulatory foundation) likely have led to the retention of its namesake time limitation even when used for early releases of groups of employees. Nothing in DOD or Army regulations precludes a longer “brief period” of group excused absence for valid reasons.¹⁶¹ While managers are not limited to the examples listed in

¹⁵⁰ St. Lawrence Seaway Dev. Corp., B-217578, 1986 U.S. Comp. Gen. LEXIS 1462, *4 (citing B-190011, 1977 U.S. Comp. Gen. LEXIS 1664).

¹⁵¹ Decision of the Comptroller General, B-190011, 1977 U.S. Comp. Gen. LEXIS 1664, *10-11.

¹⁵² *Id.* at *11(cautioning, “the employee’s time and attendance record, could not accurately reflect 40 hours. . .”). Alternate Work Schedules (AWS) also present additional duty hour considerations for granting such excusals. See, e.g., U.S. GENERAL SERVICES ADMINISTRATION REG. 6010.4, TIME AND LEAVE ADMINISTRATION (02), ch. 12, para. 7c(13) (1996) (providing: “AWS programs must not provide . . . excused absence based on individual daily work patterns. . .”).

¹⁵³ See e.g., E-mail from U.S. Navy, Civilian Human Resources Service Center, Europe, to multiple U.S. Navy human resource officers and directors (Dec. 4, 2003) (providing that “excused absence in excess of 59 minutes may not be used to create or extend a holiday . . . [and cautioning that] granting an excused absence of 4 hours just before or after a holiday creates the impression of creating or extending a holiday and is not consistent with Navy policy,” citing Guidance and Advice Memorandum #72) (on file with author).

¹⁵⁴ See DA PAM. 37-2, *supra* note 38, paras. 2-3d, 4-5, 4-17 (requiring the proper entry of administrative leave on attendance records).

¹⁵⁵ See e.g., *supra* notes 112, 113.

¹⁵⁶ Because these excused absences are for “less than one hour” it is technically a fifty-nine-minute, fifty-nine-second authority. Evincing amusement with this aspect of the rule, one blog spot reported: “Since I’m an intern with a[sic] the Department of Defense, I am entitled to . . . the ‘commander’s discretionary 59 minute early secure’. . . since Monday is a holiday, I’m allowed to leave 59-minutes early on Friday. Can I tell you a secret? I left 60 minutes early Friday.” “Sunshine,” DC and Me, 59-Minute Rule, <http://dcandme.blogspot.com/2005/07/59-minute-rule.html> (July 1, 2005).

¹⁵⁷ A Christmas Case, B-215039, 1984 U.S. Comp. Gen. LEXIS 36, *1, *3-4 (Dec. 24, 1984).

¹⁵⁸ Memorandum, Director, Office of Personnel Management, to Heads of Executive Departments and Agencies, subject: Excused Absence for Federal Employees on December 26, 2003 (10 Dec. 2003).

¹⁵⁹ See, e.g., Exec. Order No. 13,281, 67 Fed. Reg. 78,319 (Dec. 19, 2002).

¹⁶⁰ See, e.g., Weber v. Dep’t of Navy, 100 F.M.S.R. 80434 Analysis and Findings, para. 6 (Jan. 18, 2000); see also Tague v. Dep’t of Navy, AT-0752-02-0422-I-1, 103 LRP 916 fn. 4 (Dec. 30, 2002).

¹⁶¹ Indeed, such extended absences are not unknown. For example, a contractor employee of the U.S. Naval War College in Newport, RI, wrote, bemoaning his contractor employer’s denial of this privilege:

those regulations, excusal grounds similar to those listed can avoid controversy.¹⁶² In this regard, it appears that no specific excusal ground allows DOD managers more flexibility than “brief absences of periods less than 1 hour.”

Conclusion

The true gray area, therefore, is not what authority there is for a fifty-nine-minute rule, or who has the authority to grant or receive it. The true gray area lies in the purpose and frequency of the rule’s invocation. While regularly recurring excusals that have the effect of a federal workweek reduction in duty hours are outside the parameters of management discretion,¹⁶³ the occasional and infrequent use of the fifty-nine-minute rule as a good will gesture, especially in association with a recognized federal holiday is clearly within them.¹⁶⁴ So, while federal employees need not feel too guilty about getting an occasional hour off, between these examples lays an icy slope that could lead to time and attendance audits and raise issues of proper judgment with the potential for discipline. After all, DOD employees are responsible for the sound stewardship of government resources—every one of them.¹⁶⁵

[W]hen the government want[s] to send its people home early, there are three ways it can do it. The first is by enacting the “59-minute rule,” which closes up shop 59 minutes early with no charge to leave. Why it’s 59 minutes, I’m not sure. The second is liberal leave That’s not that good of a deal. The third, and best in my opinion, is administrative leave, where the government sends its people home [at] such-and-such a time without any charges to leave, basically the 59-minute rule applied on a longer scale.

Unknown, *Lowest of the Low* (July 20, 2004), at <http://www.mhonip.com/index.asp> (on file with author).

¹⁶² Federal Employees Providing Advice and Support to Fed. Credit Unions, B-212457, 1984 U.S. Comp. Gen. LEXIS 653 (Aug. 23, 1984) (providing “the types of activities for which excused absences may be granted are matters of administrative discretion and may be specified or listed in agency regulations”). See also *supra* note 11 and accompanying discussion.

¹⁶³ See *supra* note 9 and accompanying discussion.

¹⁶⁴ See generally *Weber*, 100 F.M.S.R. 80434. See also *Tague*, AT-0752-02-0422-I-1, 103 LRP 916 n.4.

¹⁶⁵ See DOD REG. 5500.7-R, *supra* note 5, para. 2-301b (providing “Government resources, including personnel . . . shall be used by DOD employees for official purposes only.”).

A Pre-Deployment Guide to Ensuring a Successful Claims Operation in an Eastern European Country¹

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Introduction

The U.S. military is deploying for training in Eastern European countries more than ever. Claims against the United States are filed, and claims judge advocates (JA) are responsible for ensuring the claims process is simple and straightforward for the claimants, the host nations, and the United States. Unlike the judge advocate who deploys to Iraq or Afghanistan and has many tools available to prepare him to practice claims law in those theatres,⁴ before now there was very little guidance for claims judge advocates deploying to Eastern European countries. The Foreign Claims Act (FCA)⁵ generally does not apply in these countries, which are members of the Partnership for Peace (PfP) or North Atlantic Treaty Organisation (NATO).⁶ Rather, the claims guidance found in the NATO Status of Forces Agreement (SOFA)⁷ dictates how the U.S. military investigates and adjudicates claims. This article provides claims guidance for JAs deploying to Eastern European countries and explains the pre-deployment steps that a JA should take to ensure a smooth claims operation.⁸ Also, JAs should follow the articles general guidance if deploying to an area outside of Eastern Europe.

Initial Research

After you receive notice that your unit will deploy to a PfP or other Eastern European country, you, as a JA, need to immediately review several documents. First, you should verify whether the country ratified the PfP or is a member of NATO. To determine this, check either the list of PfP countries contained on the Partnership for Peace's or NATO's webpage.⁹ Second, you should check to see which branch of the armed forces has single service claims responsibility for the country to which you will deploy. The branch that has single service responsibility is in charge of claims operations in a particular country, and you will need to coordinate with their claims office before deploying.¹⁰ A current list of single service

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⁴ See, e.g., INT'L & OPERATIONAL LAW DEP'T, THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER & SCHOOL, U.S. ARMY, JA 422, OPERATIONAL LAW HANDBOOK (2006) [hereinafter OPLAW HANDBOOK]. The *Operational Law Handbook* is available at a restricted website on JAGCNET, <http://www.jagcnet.army.mil/> (last visited Mar. 29, 2006). Claims judge advocates deploying to Iraq and Afghanistan have access to a restricted forum on JAGCNET, which contains training materials. Classes taught at The Judge Advocate General's Legal Center and School also focus on the Foreign Claims Act and current claims situations in Iraq and Afghanistan.

⁵ 10 U.S.C. § 2734 (2000).

⁶ North Atlantic Treaty Organisation, The Partnership for Peace, <http://www.nato.int/issues/pfp/index.html> (last visited Mar. 27, 2006) [hereinafter NATO PFP] (providing information on PfP countries and a list of current participating countries).

⁷ Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of their Forces art. VIII, June 19, 1951, 4 U.S.T. 1792, 199 U.N.T.S. 67, available at <http://www.nato.int/docu/basic/txt/b510619a.htm> [hereinafter NATO SOFA].

⁸ This article will not explain how to resolve common claims issues that occur in PfP countries and other Eastern European countries that have joined NATO. North Atlantic Treaty Organisation, The Partnership for Peace, <http://www.nato.int/issues/pfp/index.html> (last visited Mar. 27, 2006) [hereinafter NATO PFP] (providing information on PfP countries and a list of current participating countries). For that, sample scenarios, guidance, and learning lessons will be posted in the claims forum on JAGCNET and on the Center for Law and Military Operations website. The information is not yet available, but will be posted on the following websites; Center for Law and Military Operations, [https://www.jagcnet.army.mil/85256DB7005CECA3\(JAGCNET-DocID\)/HOME?OPENDOCUMENT](https://www.jagcnet.army.mil/85256DB7005CECA3(JAGCNET-DocID)/HOME?OPENDOCUMENT) (last visited Mar. 27, 2006) and JAGCNET, <https://www.jagcnet.army.mil/forums/> (follow "Forums" hyperlink) (last visited Mar. 27, 2006).

⁹ See NATO PFP, *supra* note 6; NATO Member Countries, *supra* note 8.

¹⁰ U.S. DEP'T OF DEFENSE, DIR. 5515.8, SINGLE SERVICE ASSIGNMENT OF RESPONSIBILITY FOR PROCESSING OF CLAIMS (9 June 1990). Under this directive, a particular branch of service is assigned exclusive responsibility for resolving tort claims against the Department of Defense (DOD) in a particular country. *Id.* at Encl. 1.

responsibilities is in the *Operational Law Handbook*¹¹ and can also be obtained by contacting the U.S. Army Claims Service (USARCS) or the U.S. Army Claims Service Europe (USACSEUR). Third, examine any supplementary agreements that may exist between the host nation country and the United States. Examples of current supplementary agreements are in the PfP electronic database. You should contact the foreign torts branch at USACSEUR to find out if a supplementary agreement exists. If there is a supplementary agreement, check to see if it contains any claims related language.¹² For instance, there is an agreement on the settlement of claims between the U.S. Army, Europe (USAREUR) and the Ministry of Defense of the Government of the Republic of Hungary, which applies “to all future activities of the U.S. forces in the territory of the Republic of Hungary.”¹³ Fourth, review the exercise agreement, if one exists, for any claims guidance. Samples of exercise agreements will be in the PfP electronic database. Fifth, review chapter seven of both *Army Regulation (AR) 27-20, Claims*¹⁴ and *Department of the Army Pamphlet (DA PAM) 27-162, Claims*¹⁵ to become familiar with the Army’s implementation of and guidance for its claims program when international agreements exist. Sixth, review Article VIII of the NATO SOFA,¹⁶ which explains the claims procedures between NATO countries.

Coordination with Claims Service

After conducting your initial review of the aforementioned materials, contact the appropriate service’s claims service. In all likelihood, that will mean coordinating with the foreign torts branch at USACSEUR. They will help ensure you are fully prepared to run a successful claims operation in the PfP or NATO country. If no exercise agreement exists, the appropriate headquarters, normally USAREUR or European Command, will negotiate one with the host nation. You should not attempt to negotiate an exercise agreement without prior coordination with and approval of USACSEUR, because personnel there are well-versed in what type of claims language must be in the agreements with specific countries and will help you negotiate an appropriate and legally sound agreement. Myriad claims issues are covered in exercise agreements, making it imperative that you coordinate with USACSEUR.

The NATO SOFA states that the host nation, or receiving State, will investigate and adjudicate in-scope claims between third-parties and the sending State,¹⁷ which, if the U.S. Army is deploying, is the United States. The exercise agreement normally states where the host nation will set up its Receiving State Claims Office (RSCO)¹⁸ or offices so potential claimants can file their claims against the United States. The RSCO’s hours of operation and contact information will be included in the exercise agreement. Also, the agreement should state how long the RSCO will be open after the exercise concludes to allow potential claimants the opportunity to file claims after U.S. forces leave the country.¹⁹ In European countries other than Germany, if U.S. forces conduct maneuvers off of public property without a contract, it may be considered a trespass. The exercise agreement can grant U.S. forces the right to use certain private property or explain how the United States can receive such rights.²⁰ The exercise agreement should also delineate other host nation and sending nation responsibilities with regard

¹¹ See OPLAW HANDBOOK, *supra* note 4.

¹² For example, NATO granted Albania and Macedonia exemptions from paying their normal twenty-five percent share of in-scope SOFA claims as set forth in the NATO SOFA. See Letter to Minister of Foreign Affairs of the former Yugoslav Republic of Macedonia from Mr. Javier Solana, NATO Secretary General (Apr. 5, 1999) (copy on file with authors); see also NATO SOFA, *supra* note 7, ch. VIII.

¹³ Amendment to the “Administrative Arrangement Concerning Procedures for the Operation of the Joint Claims Oversight Commission and the Settlement of Claims Arising From the Activities of U.S. Forces in Connection with the Peace Implementation Force” art. 1, Purpose, May 14, 1997 (on file with authors). The Amendment

shall not be limited to the IFOR/SFOR missions but shall apply to all future activities of the U.S. Forces in the territory of the Republic of Hungary. To the extent that provisions contained in the Claims Arrangement limit its application to the IFOR/SFOR missions, they shall be considered null and void.

Id. art. 2, Applicability. The Amendment also defines a third-party claim, an affirmative claim, and a claimant. *Id.* art. 3, Definitions.

¹⁴ U.S. DEP’T OF ARMY, REG. 27-20, CLAIMS (1 July 2003) [hereinafter AR 27-20]. A new claims regulation is forthcoming.

¹⁵ U.S. DEP’T OF ARMY, PAM. 27-162, CLAIMS PROCEDURES (1 Apr. 1998). A new claims procedures pamphlet is forthcoming.

¹⁶ See NATO SOFA, *supra* note 7.

¹⁷ *Id.*

¹⁸ See, e.g., Annex N (Maneuver Coordination and Damage Claims Procedures) in Exercise Agreement for “Immediate Response 05” Final SJA para. 5a (on file with authors). This exercise agreement (ESA) was between the United States and Bulgaria. The ESA listed an address and phone number of the RSCO. *Id.*

¹⁹ See *id.* para. 5b (“The Bulgarian Ministry of Defense (MOD) Committee will accept and process claims related to the Exercise, during the Exercise and after the MACC closure, following the completion of the Exercise.”).

²⁰ Agreement Between the United States of America and Romania Regarding the Status of United States Forces in Romania para. 3, Oct. 30, 2001 (on file with authors).

to claims, such as the Army's ability to conduct pre-maneuver damage surveys²¹ and the responsibility to report accidents and environmental damage to the host nation.²² For example, an exercise agreement with Romania specifies how scope of employment determinations are made and contains the required bilingual form.²³

The exercise agreement should also include a claims card, which Soldiers can provide to potential claimants if a situation giving rise to a claim occurs. Cards are prepared in both English and the host nation's language. The claims card should explain that claims are filed at the RSCO, contain the RSCO's address, hours, and phone number, and provide guidance as to what information is necessary to file a proper claim. Sample forms will be on the PfP electronic database on JAGCNET.

Training

After the exercise support agreement is negotiated and signed, you, the deploying judge advocate need to properly train your unit on claims operations. Civilians and uniformed personnel deploying with the unit should be provided copies of the claims card and advised to give the card to potential claimants if the former are involved in an accident or other tort. You also must remember to advise U.S. forces not to attempt to settle claims and pay claimants at the scene of the incident. In the past, servicemembers tried to "do the right thing" and paid claimants out of their own pockets, expecting the Army to reimburse them. However, no authority exists to pay the servicemembers,²⁴ and they will not be reimbursed. You should also train your unit on any unique rules in the receiving State. For example, countries have vastly different rules about automobile insurance for rental vehicles.

Environmental Issues

Proper planning for environmental issues saves the command and the claims judge advocate much unnecessary work and prevents the government from paying claims it is not responsible for. Exercise support agreements between the host nation and the United States must include environmental guidance, which is usually in an annex to the agreement.²⁵ The environmental engineer at USACSEUR serves as the subject matter expert for this annex and will coordinate with and assist you in ensuring the command satisfies the annex's requirements. Before you deploy, you should contact the environmental engineer to discuss any critical issues and receive any necessary guidance.²⁶

The environmental annex should allow for a joint investigation and testing of the land where the exercise will take place before the exercise begins. In fact, the annex should specifically list what areas will be tested and how they will be tested. The testing requirement means that any maneuver routes need to be planned early to ensure the proper areas are tested. The host nation should also provide the United States a copy of any pertinent host nation environmental laws and regulations that may impact the military's operations. The annex will list the procedures to be followed in case there is a petroleum spill. This ounce of prevention will ensure that potential claimants are not compensated for preexisting damage. The host nation also benefits by ensuring that the United States compensates claimants for damage it causes.

Miscellaneous Issues

Prior to deploying, you also should let your commander or other appropriate personnel know of any logistical support you will need to effectively run a claims operation. If USACSEUR determines that you should be a foreign claims commission,²⁷ then they will appoint you as one prior to your arrival in the host nation. Foreign claims commissions are the only personnel authorized to complete a scope authorization to determine whether a U.S. servicemember or Department of

²¹ *See id.*

²² *See id.* para. 8.

²³ *Id.*

²⁴ *See* Foreign Claims Act, 10 U.S.C. § 2734 (2000); Personnel Claims Act, 31 U.S.C. § 3721; Military Claims Act, 10 U.S.C. § 2733.

²⁵ A superb example of an annex to an exercise agreement between the United States and Bulgaria is included in the electronic database. This annex contains a complete list of both countries' responsibilities.

²⁶ Mr. Craig Walmsley is USACSEUR's environmental engineer.

²⁷ AR 27-20, *supra* note 15, para. 10-6a.

Defense civilian acted within the scope of his employment.²⁸ Bring a digital camera with you to document situations that may cause potential problems in the future. Arrange to have a translator if necessary. Finally, know how to contact USACSEUR both telephonically and via e-mail.

Conclusion

The claims judge advocate has a very important and exciting role in deployments to Eastern European countries. Advance preparation is the key to ensuring that the host nation is fairly compensated for damage U.S. forces cause and that the United States pays only for damage it causes. Judge advocates should follow this article's guidance whether deploying to an Eastern European country or any other country. The inevitable claims that arise will be handled much more smoothly if, prior to deployment, claims judge advocates make the necessary coordination with USACSEUR and follow the above guidance.

²⁸ *See id.* para. 7-10(b) ("Claims by foreign inhabitants based on acts or omissions outside the scope of official duties are cognizable under Chapter 10."); *see also id.* para. 10-6 (stating that FCCs investigate and adjudicate claims under the FCA); OPLAW HANDBOOK, *supra* note 4 (providing a sample scope certificate).

Center for Law and Military Operations (CLAMO) Note

The Judge Advocate General's Legal Center and School

Justice Under Fire

*Lieutenant Colonel Craig Trebilcock, JA, USAR**

Two years ago in the November 2003 issue of *The Army Lawyer*, this author examined the state of the Iraqi legal system on the heels of the initial U.S. occupation of that country.¹ The general conclusion at that time was that the Iraqi judiciary had an uphill battle to overcome its four decades history of corruption, political influence, and bias in order to establish the rule of law.² This article examines what additional progress, if any, has been made over the past two and one half years.

Since April 2003, significant financial and human resources have been placed at the disposal of the Iraqis for use in restoring their court system.³ The U.S. military, the State Department, the Justice Department, the American Bar Association, and myriad private entities have placed millions of dollars in reconstruction aid and thousands of professional work hours at their disposal.⁴ Even Kuwait, a former victim of Iraqi aggression, has provided support—providing legal books and training, and hosting the first visit of Iraqi jurists to Kuwait in March 2004 to promote interagency cooperation between the Kuwaiti and Iraqi Ministries of Justice.⁵ These actions have provided the Iraqis with the tangible tools needed to succeed in restoring the rule of law.⁶

Money and other tangible resources alone, however, cannot restore an independent judiciary in Iraq, nor are they a reliable measure of progress. In evaluating progress, it is important to recognize a significant factor that weighs heavily upon any fair measurement of Iraq's advances. Since August 2003, the Iraqi judiciary has not only been faced with the mission of reinventing itself from a political tool to a system of justice, but it has done so while being the specific military target of an insurgent destabilization campaign.⁷ Iraqi judges who have not been viewed as loyal to a particular faction or militia have often been targeted for elimination by Anti-Iraqi Forces (AIF) and other terrorist groups.⁸

If one uses purely objective measures, a strong case can be made for tremendous progress in the restoration of the Iraqi legal system. In terms of courthouses rebuilt and cases adjudicated, the numbers are strong.⁹ Whether or not justice exists in society, however, cannot be measured by bricks and mortar or by case processing statistics. The measurement of justice in Iraq is intangible, existing in the minds of the people over whom the system exerts authority. Justice is measured by whether the populace believes its members will receive a fair and impartial disposition of charges or grievances before the bench.

To evaluate progress in the Iraqi judicial system, one must first know the starting point from which reform will be measured. The Iraqi courts did not begin their current march toward legitimacy from a position of strength. The Iraqi

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¹ Lieutenant Colonel Craig Trebilcock, *Legal Cultures Clash in Iraq*, ARMY LAW., Nov. 2003, at 48.

² *Id.* at 50.

³ CENTER FOR LAW & MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER & SCHOOL, U.S. ARMY, LESSONS LEARNED FROM AFGHANISTAN AND IRAQ VOL. II, FULL SPECTRUM OPERATIONS (2 MAY 2003 – 30 JUNE 2004) 22-64 (2005).

⁴ See, e.g., Colonel Richard Whitaker, *Legal Operations in Northern Iraq*, PUB. LAW., Winter 2005, at 12-13; see also Informational Memorandum, Mr. Clint Williamson, Senior Advisor, Iraqi Ministry of Justice, to Ambassador Paul Bremer (20 June 2003) [hereinafter Informational Memorandum] (detailing the Ministry's request for \$40 million in funds to reconstruct judicial facilities) (on file with CLAMO).

⁵ See HUMANITARIAN OPERATIONS CENTER, STATE OF KUWAIT, 2003-2004 YEARBOOK 6 (2004) (on file with CLAMO).

⁶ In contrast, as of June 2003, twelve of eighteen courthouses in Baghdad were gutted, while seventy-five percent of the 110 court houses outside Baghdad were destroyed. No courts were operational. Informational Memorandum, *supra* note 4.

⁷ Thomas Shanker, *Chaos as a Strategy Against the U.S.*, N.Y. TIMES, Aug. 20, 2003, at A1.

⁸ "Judge Ismail Yussef Saddek was gunned down . . . in front of his house." *Second Anti-Saddam Judge Shot in Iraq*, SYDNEY MORNING HERALD (Austl.), Nov. 5, 2003, available at <http://www.smh.com.au/articles/2003/11/05/1067708244250.html>. "Qais Hashim Shameri was shot dead as he left his home . . ." *Baghdad Judge Shot Dead in Ambush*, BBC NEWS, Jan. 25, 2005, available at http://news.bbc.co.uk/1/hi/world/middle_east/4204533.stm. "Salem Mahmoud al-Haj Ali . . . was the third judge to be assassinated in Mosul since the U.S. invasion of Iraq in 2003. The Islamic militant group Ansar al-Sunnah Army claimed . . . to have carried out the killing." *Senior Iraqi Judge Shot and Killed in Car*, SAN DIEGO UNION-TRIB., June 17, 2005, available at www.signonsandiego.com/uniontrib/20050617/news_1n17_violence.html.

⁹ See 358TH CIVIL AFFAIRS BRIGADE REPORT TO COMMANDER 1ST MARINE EXPEDITIONARY FORCE, LEGAL ASSESSMENT OF SOUTHERN IRAQ 6 (Aug. 2003) [hereinafter LEGAL ASSESSMENT OF SOUTHERN IRAQ] (on file with CLAMO).

judiciary suffered from a lack of independence during thirty-five years of Saddam Hussein's rule, operating within the construct of reliance by Saddam upon his Special Security Tribunals.¹⁰

The judges in place when the United States invaded Iraq in March 2003 were in positions of power, due in large part because they learned how to survive within a treacherous and sometimes violent system.¹¹ Such survival came about from obedience to the centralized authority of Saddam's tightly controlled Ministry of Justice, not by the judges holding themselves out as champions of justice. The majority of those judges remain on the bench today, including Ba'athist judges who were originally removed by the Coalition Provisional Authority (CPA) under Ambassador Bremer only to be later reinstated by the Iraqis.¹² Despite the appointment of a small number of new judges by coalition authorities, much of the judicial reform effort has been directed at rehabilitating those who had previously held power under Saddam.¹³

As the judiciary began recovering from massive destruction and looting of the court facilities following the fall of the Ba'athist regime in April 2003, efforts to establish the rule of law were immediately handicapped by the insurgency that flared up in August 2003.¹⁴ Judges who had little familiarity with the concepts of judicial independence and impartiality after decades of Ba'athist control were asked by the CPA and civil affairs operators to employ such concepts at the very time when embracing those values made one a target for personal violence.¹⁵ As detailed below, some Iraqi judges have broken from their Ba'athist historical roots in placing concerns for self-preservation above the good of the people. Many, however, have not.

Another challenge to fairly evaluating judicial reform in Iraq is that circumstances vary greatly depending upon one's geographic location within the country. The closer a person is to Baghdad, the greater the semblance of an independent judiciary. The overwhelming presence of U.S. forces in Baghdad help reinforce the stability of the central Government,¹⁶ and accordingly, provides a positive atmosphere for the greatest progress in judicial reform. Even in Baghdad, however, judges live with the specter of violence hanging over their actions. "Judges throughout Iraq start their daily trek to the court house, not knowing if they will see their families again. Though threats are routine, so is the way judges accept the fact that intimidation is just part of their job."¹⁷

The greater the distance from Baghdad, the greater the negative influence that militias and insurgents, operating outside the Iraqi Government structure, tend to have on the development of an independent judiciary.¹⁸ The stability of the Iraqi courts is currently an uneven patchwork quilt. No one generalization can accurately describe the reality of the widely diverging levels of progress within the eighteen provinces. According to an official in the northern Kurdish area of northern Iraq, who was detained for writing comments perceived to be anti-Kurdish on the internet, "There is an absence of law. The law now, it's big fish eats the small fish."¹⁹ In Anbar province, a volatile province in the Sunni Triangle, there are no functioning criminal courts (due to instability), although there is a full complement of judges on hand.²⁰ And yet, in Babil province, in the Shiite south, general progress toward the rule of law has been made, despite concerns by judges for their personal security.

Why this difference? Although there are varied political and cultural factors, progress toward an independent Iraqi judiciary is most closely linked to the state of security throughout the country. The ultimate success or failure in restoring the rule of law to Iraq is inextricably linked to the security atmosphere. Much progress has been made in Iraq in renovating the

¹⁰ Interview with Colonel Michael Cleary, Senior Legal Advisor, Justice Attaché, U.S. Embassy, Baghdad (Aug. 26, 2005) [hereinafter Cleary Interview II] (on file with CLAMO).

¹¹ LEGAL ASSESSMENT OF SOUTHERN IRAQ, *supra* note 9, at 6.

¹² Interview with Iraqi attorney, F. Fatin, Esq. (Sept. 12, 2005) (on file with CLAMO).

¹³ LEGAL ASSESSMENT OF SOUTHERN IRAQ, *supra* note 9, at 10.

¹⁴ See Cleary Interview II, *supra* note 10.

¹⁵ *Id.*

¹⁶ Despite the presence of U.S. forces, judicial personnel in Baghdad do not have a guarantee of security. In early March 2005, a judge appointed to the special tribunal to try Saddam Hussein, and his son, were killed by gunmen as they left their home. *Killings Make Iraq Judges More Fearful*, WASH. TIMES, Mar. 2, 2005, available at <http://www.washtimes.com/upi-breaking/20050302-105216-6445r.htm>. Recently, Iraqi Chief Judge Medhat al-Mahmoud was the target of an unsuccessful assassination attempt via a remotely detonated bomb against his motorcade. E-mail from Colonel Larry Rubini, formerly CPA Ministry of Justice, Senior Legal Advisor, to LTC Craig Trebilcock (3 Jan. 2006) (on file with CLAMO).

¹⁷ Interview with COL Michael Cleary, Senior Legal Advisor, Justice Attaché, U.S. Embassy, Baghdad (Aug. 18, 2005).

¹⁸ Anthony Shadid & Steve Fainaru, *Militias on the Rise Across Iraq*, WASH. POST, Aug. 21, 2005, at 3.

¹⁹ *Id.*

²⁰ See Cleary Interview II, *supra* note 10.

physical infrastructure of the courts and providing the judiciary with the tools with which to build an independent judiciary. The continued growth and development of that system cannot be assumed, however, even if built upon such a foundation. The days of intimidation and undue influence under Saddam have not faded from the memory of the Iraqi judges and it would be unrealistic to expect these men, who survived under Saddam by being compliant, to fully embrace serious legal reform when someone new is holding a rifle to their heads.

As stated by a judge advocate responsible for judicial reconstruction in the volatile Anbar province:

In the final analysis, the only measurable [way] progress will be made, is through a genuine commitment to improvement from the Iraqi citizens working with [the judiciary, pretrial detention facilities, and the Iraqi police]. This commitment will take tremendous courage and risk on their part because individuals cooperating with the coalition forces are considered traitors by those who terrorize this region each day. There are countless examples of Iraqis being attacked or murdered for cooperating or even giving the appearance of cooperating with the coalition forces.²¹

The relationship between security and the establishment of the rule of law in Iraq is a symbiotic one. The rule of law cannot establish strong roots in a nation where the price of doing one's job as a judge means death. And yet, the people of Iraq will not have the faith to resist that insurgency and support the judiciary (as well as other Iraqi government institutions) unless they see marked evidence that those institutions have evolved so as to warrant the sacrifice.²²

Another of the challenges facing the courts is that the police forces in many of the towns where the provincial courts sit remain rife with corruption and political allegiances.²³ Basra, the major Shiite city, regarded since 2003 as a relatively stable oasis amidst the sectarian violence elsewhere in Iraq, is becoming increasingly destabilized by an estimated 200-300 police officers known as the Jameat who murder and torture at will in support of their factional political goals.²⁴ Judges operating in such an atmosphere are certainly cognizant of their own safety when seeking to exercise their judicial authority—a reality that cannot help but retard progress toward the rule of law.

The Iraqi civilian population is still cautious in placing its confidence too fully in the revamped Iraqi judiciary. The initial euphoria regarding the fall of Saddam's political machinery in the Shiite south has been replaced with caution and wariness in the minds of the public. One source of public concern is that, "most of the corrupt judges, who had been dismissed by the Judicial Review Committee established by Ambassador Bremer in 2003, were reinstated by the Chief Justice of the Judicial Council [following a reversal of the de-Ba'athification policies in April 2004]. They are very well known by the people."²⁵ This unwillingness of the Ministry of Justice to remove former Ba'athist elements from the bench leads many Iraqis to wonder if the courts can be trusted. Many Iraqis also still fear that their judicial system will not convict Saddam Hussein, despite bold assertions to the contrary by the prosecutors involved in gathering evidence.²⁶ These lingering concerns promote a wait and see attitude toward the courts by many Iraqis.

There is hesitancy within the judicial ranks as well—as to whether the rule of law will take root in the new Iraq. Some judges who claim to pursue action against corruption within the Iraqi government allege that they have been demoted or removed for being too effective in their positions.²⁷ These allegations further erode public confidence in the judicial process, whether true or not, in an already wary populace who feels the ongoing insurgent violence has "affected the judges badly."²⁸ Violence as a tool to affect the outcomes of judicial proceedings is not limited to the insurgents as perpetrators, nor to the courts as targets. The murder of two of Saddam Hussein's attorneys during their defense of the former ruler²⁹ sadly reflects

²¹ Memorandum, Major Craig E. Bennett, International Law Officer, 304th Civil Affairs Brigade, to Staff Judge Advocate, 1st Marine Division (25 Feb. 2004) (on file with CLAMO).

²² "The test of the effectiveness of the judiciary is how it faces the insurgency. Also whether judges dispose of their criminal and insurgency cases without regard to the threats made against them." Cleary Interview II, *supra* note 10.

²³ Shadid & Fainaru, *supra* note 18.

²⁴ Richard A. Oppel, Jr., *Hiding as Police, Militias Hold the Power in Basra*, SEATTLE TIMES, Oct. 9, 2005, available at http://seattletimes.nwsources.com/html/nationworld/2002549373_militias09.html (originally printed in the *New York Times*).

²⁵ Interview with F. Kareem, Ministry of Justice (Sept. 12, 2005) [hereinafter Kareem Interview] (worked within the CPA controlled Ministry of Justice during 2003-2004) (on file with CLAMO).

²⁶ *Id.*

²⁷ See Scott Peterson, *Demoted Iraqi Judge Fears for his Country's Future*, CHRISTIAN SCI. MONITOR, Nov. 1, 2004, available at www.csmonitor.com/2004/1101/p11s02-woiq.html.

²⁸ Kareem Interview, *supra* note 25.

²⁹ See *Saddam Trial Lawyer Is Shot Dead*, BBC NEWS, No. 8, 2005, available at http://news.bbc.co.uk/2/hi/middle_east/4417948.stm.

the continued presence of elements in Iraqi society who wish to resolve grievances with violence as opposed to the rule of law. Accordingly, if one evaluates the progress of Iraqi judicial reform by the degree of public confidence in the judicial institutions, it is fair only to state that the ongoing insurgency is retarding both the progress of the courts and their reputation in the eyes of the Iraqi people.

Despite the above public concerns, there are positive signs of progress. That judges still endure significant risk to their personal safety in order to accomplish the ideal of an independent judiciary creates a basis for optimism. In the words of the Justice Attaché to the U.S. Embassy in Baghdad during 2005, “Iraqis are literally dying for the chance to achieve an efficient and effective court system in a democracy of their own choosing.”³⁰

Another positive development is that the Iraqi Government has taken necessary foundational steps for the Iraqi judiciary to assert its authority in the future. The 13 July 2003 establishment of a governing council and the 1 June 2004 founding of the Iraqi Interim Government were major steps in restoring sovereignty to Iraq and autonomy to its courts.³¹ The more recent October 2005 Iraqi Constitutional referendum established another necessary step toward the rule of law.³²

Despite the intimidation and violence directed at judges by insurgents, there are also rewards for those with the resolve to seek positive reform. As related by the recent Senior Legal Advisor, Justice Attaché at the U.S. Embassy in Baghdad:

An example of courts facing their challenge is the court in Hillah (Babil Province). As I interviewed the provincial Chief Judge, Chief Prosecutor, and Chief Investigative Judge, they mentioned that one had his son murdered, another had been wounded in an assassination attempt, and another had been recently assigned an extra large [personal security detachment] due to the death threats. However, their perseverance was rewarded when the Higher Judicial Council rewarded them with the privilege of establishing an anti-terrorism court in Hillah. Several other jurisdictions have been rewarded in the same method.³³

Any “chicken and egg” analysis, asking which must come first—security or reform—misses the mark. Both must trudge forward in tandem, occasionally making progress and occasionally enduring setbacks, without losing sight of the objective. The rule of law will not succeed in Iraq without a more stable security environment, just as a more stable security environment will not endure without the rule of law.

Progress has been made, but nearly three years after the U.S. invasion, it is fair only to claim that the opportunity for the rule of law still exists—not that the goal has been achieved. The will for continuing self-sacrifice from Iraqi jurists, the Iraqi people, and security forces is necessary for success. The rule of law will be established only when Iraqi judges may apply the rule of law to a given case, without self-interest or fear for their survival. Until that day, however, the end state for the Iraqi judicial system is still up for grabs.

³⁰ Cleary Interview II, *supra*, note 10.

³¹ On 8 June 2004, the U.N. Security Council, acting under Charter VII of the United Nations Charter recognized that “by 30 June 2004 the occupation will end and the Coalition Provisional Authority will cease to exist, and that Iraq will reassert its full sovereignty.” S.C. Res. 1546, U.N. Doc. S/RES/1546 (June 8, 2004).

³² See Qassim Abdul-Zahra, *Iraq Tries to Protect Voters*, YORK DAILY NEWS (Pa.), Oct. 9, 2005, at A4.

³³ Cleary Interview II, *supra*, note 10.

Book Review

IN TIME OF WAR: HITLER'S TERRORIST ATTACK ON AMERICA¹

REVIEWED BY MAJOR CHRISTINE M. SCHVERAK²

[Colonel] Royall had to have been struck by the parallels to the story of *Alice in Wonderland*, in which Alice found herself in a kangaroo-style trial where the Red Queen famously intoned, "Sentence first, verdict afterward," and then pronounced, "Off with her head!" It would be a whole lot easier to get a black man acquitted of almost any crime by a southern white jury than to secure an acquittal — or even something less than the death penalty — for these defendants.³

Soon after the attack on Pearl Harbor in World War II, Germany attempted to terrorize the American public by dispatching eight covert military operatives to Ponte Vedra Beach, Florida and Long Island, New York.⁴ Their mission was to destroy American industrial capabilities by sabotage and inflict terror bombings on the populace.⁵ After one operative turned himself in to the Federal Bureau of Investigation (FBI), the FBI quickly located and arrested the remaining seven.⁶ All eight operatives confessed.⁷ Although two were citizens of the United States, the government tried all eight men by military commission instead of in federal district court.⁸ Colonel (COL) Kenneth Royall, an Army judge advocate, defended seven of the eight saboteurs.⁹ Within forty-four days of apprehension, the commission sentenced all of the saboteurs to death, and the government executed six of them.¹⁰ President Roosevelt spared two saboteurs because they cooperated with the government.¹¹ The government then tried many of the saboteur's friends and family in federal court for assisting them.¹²

In Time of War is a must read for any judge advocate contemplating whether or not it is *just* for the government to try enemy combatants by military commission. Pierce O'Donnell provides an entertaining and panoramic look at historical events surrounding the case of the German saboteurs and the resulting precedent from their trial. *In Time of War* then compares the case of the German saboteurs in 1942 to the current detention of Taliban and Al Qaeda operatives.¹³ The author offers four significant conclusions: (1) *Ex Parte Quirin* should not be treated as precedent;¹⁴ (2) all detainees, even unprivileged belligerents, should be tried in accordance with the Uniform Code of Military Justice or by a jury in federal court;¹⁵ (3) the lower federal courts or a competent person, rather than a military officer, should convene an Article Five¹⁶ tribunal;¹⁷ and, (4) all captives should be treated as prisoners of war (POWs).¹⁸ The author's commitment to his conclusions

¹ PIERCE O'DONNELL, *IN TIME OF WAR: HITLER'S ATTACK ON AMERICA* (2005).

² U.S. Army. Written while assigned as a student, 54th Judge Advocate Officer Graduate Course, The Judge Advocate General's Legal Center and School, U.S. Army, Charlottesville, Virginia.

³ O'DONNELL, *supra* note 1, at 132. Colonel Kenneth C. Royall defended seven of the eight "saboteurs." *Id.* at 138.

⁴ *Id.* at 55-65; *see* EUGENE RACHELIS, *THEY CAME TO KILL: THE STORY OF EIGHT NAZI SABOTEURS IN AMERICA* 21 (1961).

⁵ O'DONNELL, *supra* note 1, at 6.

⁶ *Id.* at 78.

⁷ *Id.* at 101-03.

⁸ *Id.* at 133-34; *see Ex parte Quirin*, 317 U.S. 1 (1942).

⁹ *Id.* at 131.

¹⁰ RACHELIS, *supra* note 4 (listing the date of capture as 27 June 1942 and the date of execution as 8 August 1942).

¹¹ O'DONNELL, *supra* note 1, at 248.

¹² *Id.* at 288-89 (stating that as many as fourteen people were prosecuted, including: Hans Haupt, the father of one saboteur, who was convicted of treason and received life imprisonment; Anthony Cramer, a friend of two of the saboteurs, who was convicted of treason and received a forty-five year prison sentence; Hedy Engemann, a saboteur's mistress, who received a three year prison sentence after pleading guilty to misprision of treason).

¹³ *Id.* at xiii-xviii.

¹⁴ *Id.* at 353.

¹⁵ *Id.* at 365.

¹⁶ An article five tribunal is a tribunal convened pursuant to Article Five of the Geneva Convention for Prisoners of War to determine an individual's status when the situation is unclear. Geneva Convention Relative to the Treatment of Prisoners of War art. 5, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135.

¹⁷ O'DONNELL, *supra* note 1, at 365.

can be seen by his willingness to provide a website that makes much of his supporting documentation available to the reader for personal study.¹⁹ When visiting the website, one document the reader should skim is Colonel Royall's oral history transcript. The transcript provides eye-opening first hand accounts of how executive level decisions were made during World War II and also summarizes the entire career of a very intellectually bright judge advocate who rose from a modest home in North Carolina to become Under Secretary of War in 1945.²⁰

While the book is entertaining, at times the author is overly dramatic in his presentation of history. More conservative readers may find the Introduction and the overall tone of the book difficult to stomach. The Introduction, written by Anthony Lewis,²¹ gleefully slings muddy adjectives at all aspects of the U.S. government from the past to the current Bush administration.²² This is unfortunate because the audience that could benefit the most from this book—attorneys from the military, Justice Department, and general counsel's offices—are immediately put on the defensive, perhaps blinding them to an area of law that needs refinement.

The book also fails to direct the reader to the author's overall conclusions through a step by step comparative analysis of both sides of the federal, military, and international law surrounding the use of military commissions. The author, however, does a good job stating military commissions are bad because many people say so.²³ The text and footnotes are often a who's who of famed civil rights supporters.²⁴ While that may persuade many in the general public, an attorney reading this book may crave more information. Nevertheless, this book is a useful starting point for discussions on the justice of military commissions and how to improve them.

The Law of Sausages—An Ugly Look at History

The author is deliberately overdramatic in his approach to history. Today, the United States detains al Qaeda terrorists by relying on *Ex Parte Quirin*,²⁵ a Supreme Court case arising from a habeas corpus request filed by COL Royall during the saboteurs' trial.²⁶ Mr. O'Donnell believes that, much like sausage, if the American public really knew how *Ex Parte Quirin* was decided, they could not stomach it.²⁷ Putting his considerable trial advocacy skills²⁸ to work, Mr. O'Donnell's view of history seeks to persuade the reader that *Ex Parte Quirin* is such bad law that it is equivalent to the following cases:²⁹ *Dred Scott v. Sandford*,³⁰ *Plessy v. Ferguson*,³¹ and *Hirabayashi v. United States*.³²

¹⁸ *Id.* at 354.

¹⁹ In Time of War Home Page, http://www.intimeofwar.org/source_documents.htm (last visited Mar. 13, 2005).

²⁰ Colonel Kenneth C. Royall was an artillery officer in World War I who got out of the military after the war. William T. Ingersoll & Frank W. Rounds, Jr., *The Reminiscences of Kenneth Clairborne Royall* 8 (1964) (unpublished manuscript) (on file with Manuscripts Department, Wilson Library, University of North Carolina at Chapel Hill). The Under Secretary of War, Bob Patterson, asked Kenneth Royall to join the army as a Colonel for World War II. *Id.* at 9. Both Supreme Court Justice Felix Frankfurter and North Carolina Governor J. Melville Broughton helped to persuade him. *Id.* at 9 and 21. He came to Washington to work in the legal section on war department contracts. *Id.* at 10. After representing the saboteurs, Colonel Royall was later appointed a Brigadier General in 1943. *Id.* at 43. President Truman then appointed him Under Secretary of War in November 1945. *Id.* at 86. Additionally, COL Royall has interesting memories of the Nuremberg trials—he was asked if he would be interested in "taking charge of the whole thing" and he was not because he disagreed with the charge of "waging an aggressive war." *Id.* at 311-12.

²¹ Mr. Lewis is a graduate of Harvard College, the author of *Gideon's Trumpet*, a novel about the landmark Supreme Court case, *Gideon v. Wainwright*, and a two-time Pulitzer Prize winner. He lectured at Harvard Law School, teaching a class on the Constitution and the press for fifteen years. Anthony Lewis: *Abroad At Home/ At Home Abroad*, N.Y. TIMES ON THE WEB, http://www.nytimes.com/library/opinion/lewis/bio_lewis.html (last visited Mar. 13, 2006).

²² O'DONNELL, *supra* note 1, at xiii-xviii.

²³ *Id.* at 306-09.

²⁴ *Id.* at 296-324, 429 nn.36-39.

²⁵ *Ex Parte Quirin v. Cox*, 317 U.S. 1 (1942).

²⁶ O'DONNELL, *supra* note 1, at 190-221; *see Hamdi v. Rumsfeld*, 542 U.S. 507 (2004) (citing *Ex Parte Quirin* as support for the detention of Mr. Hamdi).

²⁷ Prince Otto von Bismarck-Schonhausen, Duke of Lauenberg, 1815-1898 (stating that "People who enjoy eating sausage and obey the law should not watch either being made").

²⁸ O'DONNELL, *supra* note 1, at jacket (stating that Mr. O'Donnell is a graduate of Georgetown and Yale who clerked for Supreme Court Justice Byron R. White. He was named one of the "100 Most Influential Lawyers in America" by National Law Journal).

²⁹ *Id.* at 353.

³⁰ *Dred Scott v. Sandford*, 60 U.S. 393 (1856) (finding that a slave could not sue his master for assault because he wasn't a citizen and so could not bring the action).

³¹ *Plessy v. Ferguson*, 163 U.S. 537 (1896) (finding that it did not conflict with the Thirteenth and Fourteenth Amendment for a railroad to provide separate accommodations for the white and colored races).

One way the book discredits *Ex Parte Quirin* is by marring President Roosevelt's character and painting his decision to try the German saboteurs by military commission as unfair. The author even notes that President Roosevelt once told the Secretary of the Treasury that, "I am perfectly willing to mislead and tell untruths, if it will help win the war."³³ In another unnecessary example of drama run awry, the author states, "as far as the president and his attorney general were concerned, the eight German defendants were doomed men who would be sped on their way to execution in an expedient, preordained process masquerading as a fair trial."³⁴ Ironically, if the reader checks the footnote, it was a junior member of the defense team, Lausen H. Stone, who felt this way.³⁵

Meanwhile, to garner the reader's sympathy, the author depicts the saboteurs as ordinary men with regular jobs and families.³⁶ The author opines, through the character of COL Royall, that "they hardly looked or talked like cold-blooded saboteurs or the pride of the Third Reich."³⁷ The insinuation is that by appearances, they were innocent. The likeability of a client, however, may have absolutely no relation to his or her guilt!³⁸

Finally, after spending several chapters calling the military commission a "kangaroo court,"³⁹ it is ironic that later on in the book, the author has to concede it was a fair trial with a fair outcome. He states,

The president's prosecution team presented an airtight case based on the German defendant's own damaging statements and incriminating physical evidence . . . All in all, the government struck hard but mostly *fair* blows in securing the Germans' inevitable convictions . . . That they had already confessed to the charges without any coercion by the FBI had more to do with the outcome than any bias or predisposition on the part of the seven generals [who sat on the commission].⁴⁰

One Seems Right Until Another Pleads His Case⁴¹

In Time of War raises good questions, but fails to lead the reader to the author's overall conclusions through a step by step comparative analysis of both sides of the federal, military, and international law on the issue. One of the author's most challenging points is the question of what civil rights a U.S. citizen should receive when the government detains that citizen as an enemy combatant.⁴² For example, when the government presses charges against a U.S. citizen who fights for the enemy, should the government: (1) file federal charges in a federal court after a grand jury indictment; (2) file military charges in a military court after an Article 32 proceeding; or (3) file charges in a military commission or an international tribunal? Alternatively, can the government simply detain the citizen until the end of the conflict? The author never does a step by step analysis that looks at all sides of this issue. It is as if the reader is seeing the defense's case for civil rights without ever seeing the government's case for limiting those rights.

The author's short-sighted approach can be seen by looking at two of his conclusions in relation to current cases. Mr. O'Donnell advocates that the government must give Yaser Hamdi and Jose Padilla POW status⁴³ and either try them in federal court or release them.⁴⁴ The military captured Mr. Hamdi on a battlefield in Afghanistan.⁴⁵ He is a U.S. citizen with

³² *Hirabayashi v. United States*, 320 U.S. 81 (1943) (affirming conviction for violation of a military curfew where curfew order did not unconstitutionally discriminate against persons of Japanese ancestry).

³³ O'DONNELL, *supra* note 1, at 50.

³⁴ *Id.* at 128.

³⁵ *Id.* at 390 n.43.

³⁶ *Id.* at 138.

³⁷ *Id.*

³⁸ Captain Ryan Rosaeur, Senior Defense Counsel, Fort Riley, Kansas ("I am firmly convinced that the likeability of my clients has absolutely no relation whatsoever to their guilt or innocence").

³⁹ O'DONNELL, *supra* note 1, at 141.

⁴⁰ *Id.* at 348-349 (emphasis added).

⁴¹ *Proverbs* 18:17 ("The first to present his case seems right, til another comes forward and questions him").

⁴² O'DONNELL, *supra* note 1, at 354.

⁴³ *Id.*

⁴⁴ *Id.* at 359.

ties to the Taliban.⁴⁶ The police arrested Mr. Padilla, a U.S. citizen with ties to al Qaeda, at Chicago O'Hare Airport following a flight from Pakistan.⁴⁷ The U.S. government is detaining both men as unprivileged belligerents or unlawful enemy combatants.⁴⁸

By concluding that the government should give Mr. Padilla and Mr. Hamdi POW status and a trial in federal court, Mr. O'Donnell glosses over the real question. The real question is where and how to draw the line between when a U.S. citizen is simply a criminal as opposed to a lawful combatant or an unprivileged belligerent. Mr. O'Donnell would treat all categories the same. But, while the government could try a criminal in federal or state court on charges with all the associated constitutional protections, the government would also have to expeditiously charge the criminal or *release* him.⁴⁹ During World War II, however, the government could detain a captured German soldier as a POW until the war with Germany was over.⁵⁰ Interesting questions start to arise when the reader considers a citizen, like Mr. Padilla, who joins an international terror organization and allegedly enters the United States to blow up apartment buildings.⁵¹ The United States is arguing that the government can detain Mr. Padilla until the end of hostilities with al Qaeda.⁵² At first blush, it would seem to be an odd result if a POW could be legally held until the cessation of hostilities, but an unprivileged belligerent could not. However, when does a citizen like Mr. Padilla become an unprivileged belligerent or a POW who can be detained for the duration of hostilities as opposed to a criminal? Does he or should he lose his citizenship rights by simply joining al Qaeda? What if he goes to Afghanistan to train and then guards an al Qaeda outpost?⁵³ If a citizen can lose his rights for that reason, could a citizen lose his citizenship rights by joining a gang that wants to overthrow the government? The author brings this matter to light and voices his opinion on this issue, but never comparatively analyzes this intersection of federal and international law so that the reader can come to his own conclusions.

The author's short-sighted approach can also be seen in the way the book dismisses the option of using military commissions to try detainees. The author does a great job of saying that William Safire,⁵⁴ the American Civil Liberties Union,⁵⁵ the International Commission of Jurists (ICJ),⁵⁶ Lord Steyn of Great Britain,⁵⁷ Lord Peter Goldsmith,⁵⁸ and others all dislike military commissions. The author cites the critics as wondering, "why special tribunals [are] necessary at all."⁵⁹ But the book never truly analyzes why special tribunals may be necessary. For example, military commissions have historically relaxed the rules of evidence to prevent guilty men from going free when war has destroyed traditional means of proving

⁴⁵ Hamdi v. Rumsfeld, 542 U.S. 507, 587 (2004).

⁴⁶ *Id.*

⁴⁷ Padilla v. Hanft, No. 05-6396, 2005 U.S. App. LEXIS 19465, at *4 (4th Cir., Sept. 9, 2005). Mr. Padilla's case has taken significant twists since both *In Time of War* and this review were written. On 17 November 2005, the United States indicted Mr. Padilla in the U.S. District Court for the Southern District of Florida on allegations of conspiracy to commit acts of murder, kidnapping, and maiming within the United States. *United States v. Hassoun*, No. 04-600001-CR-COOKE (S.D. Fla. filed Nov. 17, 2005). The U.S. Supreme Court granted the Solicitor General's application to move Mr. Padilla from military custody to civilian custody on 4 January 2006. *See* Hanft v. Padilla, No. 05A578, 126 S. Ct. 978 (U.S. 2006). Mr. Padilla entered a plea of not guilty on 13 January 2006, and his trial was set for September 2006. Curt Anderson, *Former 'Enemy Combatant' Pleads Not Guilty*, BOSTON.COM, Jan. 12, 2006. Mr. Padilla filed a petition for writ of certiorari on 25 October 2005 that is currently under consideration by the U.S. Supreme Court. *See* Padilla v. Hanft, No. 05-533 (U.S. filed Oct. 25, 2005).

⁴⁸ O'DONNELL, *supra* note 1, at 318-20, 334-39.

⁴⁹ U.S. CONST. amend. V. (stating that "No person . . . [shall] be deprived of life, liberty, or property, without due process of law. . ."); U.S. CONST. amend. VI. (stating that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial. . ."); Speedy Trial Act of 1974, 18 U.S.C. § 3161(b) (2000) (as amended).

⁵⁰ Geneva Convention Relative to the Treatment of Prisoners of War, art. 118, Aug. 12, 1949, 6 U.S.T. 3316, 3406, T.I.A.S. No. 3364 [hereinafter GC III] (stating that "Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities").

⁵¹ Padilla, 2005 U.S. App. LEXIS 19465, at *9.

⁵² *Id.* at *5.

⁵³ *Id.* at *8.

⁵⁴ William Safire is a *New York Times* columnist. O'DONNELL, *supra* note 1, at 306.

⁵⁵ *Id.* at 305.

⁵⁶ The International Commission of Jurists is an organization of judges and lawyers dedicated to advancing and promoting human rights. *Id.* at 308; *see* International Commission of Jurists, http://www.icj.org/rubrique.php?id_rubrique=11&lang=en (last visited Mar. 13, 2006).

⁵⁷ Lord Johan Steyn was one of the judges on the United Kingdom's highest court, the House of Lords, until he retired in 1995. He is known as a steadfast supporter of human rights. O'DONNELL, *supra* note 1, at 312-13, 429 n.38; *see* Wikipedia, Johan Steyn, http://en.wikipedia.org/wiki/Johan_Steyn (last visited Mar. 13, 2006).

⁵⁸ Lord Peter Goldsmith is the current Attorney General for England and Wales. O'DONNELL, *supra* note 1, at 359; *see* Wikipedia, Peter Goldsmith, Baron Goldsmith, http://en.wikipedia.org/wiki/Peter_Goldsmith%2C_Baron_Goldsmith (last visited Mar. 13, 2006).

⁵⁹ O'DONNELL, *supra* note 1, at 305.

evidence.⁶⁰ For example, a civilian victim who was raped by a soldier may have recorded the war crime in a diary only to later die in a detention camp prior to the end of the hostilities.⁶¹ A military commission or tribunal would likely relax the rules to allow the diary of the deceased victim to be entered in evidence. Indeed, the rules of evidence were relaxed in the Nuremburg trials, a trial that all the critics approve of.⁶² Since the Nuremburg trials are held up as an example of justice, it begs the question of whether or not the 1949 Geneva Conventions intended to abolish the use of military commissions, along with the relaxed rules of evidence that typically go with them.⁶³ Mr. O'Donnell does not do enough analysis to truly argue that military commissions should be extinct. The reader needs additional information to make an informed evaluation of whether the government can and should relax the rules of evidence during current military commissions that are trying the detainees held at Guantánamo Bay, Cuba.

Those Who Give Up Liberty for Safety Deserve Neither⁶⁴

In Time of War is a must read for any judge advocate willing to consider whether or not it is *just* for the government to try enemy combatants by military commission. The author is overly dramatic, but generally accurate, in his portrayal of history. Although the author has four very interesting conclusions, he fails to complete his conclusions with a thorough comparative analysis of the applicable federal, military, and international law surrounding the issue. The book, however, still awakens the reader to an area of law that needs refinement. Specifically, the law, or the government itself, needs to identify some boundaries lines to assist in classifying whether an individual is a criminal or whether the same individual is better classified as a detainee who will be held until the cessation of hostilities with the possibility of eventual prosecution by military commission. These boundary lines need to be publicly available. As the global war on terror continues, the United States will continue to face criticism that the use of military commissions is unjust. Understanding the history of civil rights in this area will give attorneys for the military, Justice Department, and general counsel's offices a much better grasp of how to pursue justice, yet maintain the United States commitment to life, liberty, and the pursuit of happiness.⁶⁵ After all, "[i]n time of... war the people look . . . to the executive solely."⁶⁶

⁶⁰ Christine Schverak, A Comparative Analysis of the Military Trial of General Tomoyuki Yamashita 35 (Spring 2002) (unpublished manuscript on file with author).

⁶¹ *Id.* at 36; see also RICHARD L. LAEL, THE YAMASHITA PRECEDENT: WAR CRIMES AND COMMAND RESPONSIBILITY (1982) (discussing means of proving General Yamashita's guilt before a military commission); GEORGE F. GUY, THE DEFENSE OF YAMASHITA, 6 USAFA J. LEG. STUD. 215, 222 (1996) (discussing evidence received by the military commission).

⁶² RICHARD H. MINEAR, VICTOR'S JUSTICE: THE TOKYO WAR CRIMES TRIAL 15 (1971); O'DONNELL, *supra* note 1, at 309.

⁶³ O'DONNELL, *supra* note 1, at 129; GC III, *supra* note 50, art. 102 ("A prisoner of war can be validly sentenced only if the sentence has been pronounced by the same courts according to the same procedure as in the case of members of the armed forces of the Detaining Power, and if, furthermore, the provisions of the present Chapter have been observed").

⁶⁴ O'DONNELL, *supra* note 1, at page before contents (quoting Benjamin Franklin, "They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety").

⁶⁵ THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).

⁶⁶ O'DONNELL, *supra* note 1, at 11, 370 n.9.

Appendix*

Department of Defense Legislation for Fiscal Year 2006

Typically, the legislation update is contained in the January issue of *The Army Lawyer*; however, this year, neither the Appropriations nor the Authorization Act was passed by the submission deadline.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2006

President Bush signed into law the Department of Defense (DOD) Appropriations Act, 2006, on 30 December 2005.¹ The Act appropriated over \$440 billion to DOD for fiscal year (FY) 2006.² This amount is down from the approximately \$453 billion that Congress appropriated to DOD in FY 2005, but is about \$43 billion more than President George W. Bush requested for the current fiscal year.³

Basic Yearly Appropriations

Congress appropriated over \$96 billion⁴ for Military Personnel (MILPER), down from almost \$104 billion⁵ last fiscal year; \$121.7 billion⁶ for Operation and Maintenance (O&M), up slightly from \$121.06⁷ billion last fiscal year; \$76.5 billion⁸ for Procurement, down from \$77.6⁹ billion last year; and \$71.9 billion¹⁰ for Research, Development, Test, and Evaluation (RDT&E), up from almost \$70 billion last year.¹¹

Emergency and Extraordinary Expenses (EEE) and Combatant Commander Initiative Fund (CCIF)

Congress again authorized the Secretary of Defense (SECDEF) and the service secretaries to use a portion of their Operation and Maintenance (O&M) appropriations for “emergencies and extraordinary expenses,” in an amount totaling \$50,849,800 for both the DOD and the service secretaries.¹² In addition, Congress authorized the use of \$25 million of the DOD O&M appropriation for the Combatant Commander Initiative Fund, authorized under 10 U.S.C. § 166a.¹³

* This appendix is to be used in conjunction with the January 2006, *The Army Lawyer*, Contract and Fiscal Law Developments of 2005—The Year in Review, Department of Defense Legislation for Fiscal Year 2006.

¹ Department of Defense Appropriations Act, 2006, Pub. L. No. 109-148, 119 Stat. 2680 (2005). The joint conference report accompanying the Act requires the DOD to comply with the language and allocations set forth in the underlying House and Senate Reports unless they are contrary to the bill or joint conference report. H.R. CONF. REP. NO. 109-359, at 173 (2005); *see also* H.R. REP. NO. 109-119 (2005); S. REP. NO. 109-141 (2005); H.R. REP. NO. 109-95 (2005).

² S. REP. NO. 109-141, at 1 (2005).

³ *Id.*

⁴ Department of Defense Appropriations Act, 2006, tit. I.

⁵ Department of Defense Appropriations Act, 2005, tit. I, Pub. L. No. 108-287, 118 Stat. 951 (2004).

⁶ Department of Defense Appropriations Act, 2006, tit. II.

⁷ Department of Defense Appropriations Act, 2005, tit. II.

⁸ Department of Defense Appropriations Act, 2006, tit. III.

⁹ Department of Defense Appropriations Act, 2005, tit. III.

¹⁰ Department of Defense Appropriations Act, 2006, tit. IV.

¹¹ Department of Defense Appropriations Act, 2005, tit. IV.

¹² Department of Defense Appropriations Act, 2006, tit. II. The DOD may use its O&M for emergencies and extraordinary expenses (EEE) in an amount not to exceed \$36 million; the Army, \$11,478,000; the Navy, \$6,003,000; and the Air Force, \$7,699,000. The Marine Corps does not receive special authority to expend EEE funds. *Id.*; *see also* 10 U.S.C.S § 127 (LEXIS 2004).

¹³ Department of Defense Appropriations Act, 2006, tit. II; *see also* 10 U.S.C.S. § 166a (providing the underlying authority for the Combatant Commander Initiative Fund).

The United States Court of Appeals for the Armed Forces

The United States Court of Appeals for the Armed Forces again received an appropriation for salaries and expenses in the amount of \$11,236,000,¹⁴ up from \$10,825,000¹⁵ last fiscal year.

Environmental Restoration

Congress appropriated more than \$1.4 billion to DOD, the Army, the Navy, and the Air Force for environmental restoration, which includes, “environmental restoration, reduction, and recycling of hazardous waste, removal of unsafe buildings and debris... [and] for similar purposes.”¹⁶

Overseas, Humanitarian, Disaster, and Civic Aid (OHDACA)

Congress provided \$61,546,000 in funds, which are available until 30 September 2007, for the programs authorized under a number of sections of Title 10 relating to humanitarian assistance, to include demining, excess property programs, and “Humanitarian Assistance (Other)” (HAO).¹⁷ The appropriation is up slightly from \$59 million last fiscal year.¹⁸

Former Soviet Union Threat Reduction

Congress appropriated \$415,549,000 for assistance to the republics of the former Soviet Union.¹⁹ This assistance is limited to activities related to the elimination, safety and security transportation, and storage of nuclear, chemical, and other weapons in those countries, which also includes efforts aimed at non-proliferation of these weapons.²⁰ Of the amount appropriated, \$15 million specifically supports the dismantling and disposal of nuclear submarines, submarine reactor components, and warheads in the Russian Far East.²¹ Congress again included authority to use these funds for “defense and military contacts.”²² These funds are available until 30 September 2008.²³

¹⁴ Department of Defense Appropriations Act, 2006, tit. II. The appropriation also authorizes the use of up to \$5,000 of this appropriation for official representation purposes. *Id.*

¹⁵ *Id.*

¹⁶ *Id.* The Department of Defense received \$28,167,000, the Army received \$407,865,000, the Navy received \$305,275,000, and the Air Force received \$406,461,000. *Id.* In addition, a separate appropriation, titled “Environmental Restoration, Formerly Used Sites,” Congress appropriated a total of \$256,921,000. The funds available under these sections are transferable to other appropriations available to DOD, the Army, the Air Force, and the Navy. The funds then merge with the appropriation to which the funds were transferred and may then only be used for the purpose of and the time amount for which the appropriation is available. *Id.*

¹⁷ *Id.*; see also 10 U.S.C.S. §§ 401, 402, 404, 2557, 2561 (LEXIS 2004).

¹⁸ Department of Defense Appropriations Act, 2005, tit. II, Pub. L. No. 108-287, 118 Stat. 951 (2004).

¹⁹ Department of Defense Appropriations Act, 2006, tit. II (Former Soviet Union Threat Reduction Account). The amount is up slightly from \$409.2 million last FY. Department of Defense Appropriations Act, 2005, tit. II.

²⁰ Department of Defense Appropriations Act, 2006, tit. II.

²¹ *Id.*

²² *Id.*

²³ *Id.*

Defense Health Program

Congress provided more than \$2 billion more in funding for the Defense Health Program, for a total of over \$20.2 billion.²⁴

Drug Interdiction and Counter-Drug Activities

Congress again appropriated funds for the DOD to use for drug interdiction and counter-drug activities.²⁵ The funds are transferable to other appropriations, to include: military personnel of the reserve components, O&M, procurement, and RDT&E.²⁶

General Transfer Authority

Congress increased the level of DOD's general transfer authority from \$3.5 billion to \$3.75 billion for FY06,²⁷ and also provided an additional \$2.5 billion of additional funding.²⁸

Congressional Prohibitions

Congress again placed prohibitions in Title VII of the Appropriations Act, to include prohibiting the use funds for "publicity or propaganda not authorized by Congress"²⁹ and for the purpose of influencing congressional action on any legislation or appropriation matters, either directly or indirectly.³⁰ Congress also limited the ability of the SECDEF and the Service Secretaries to obligate funds during the last two months of the fiscal year to twenty percent of one-year appropriations contained in the Act.³¹ Congress again limited the availability of funds for conversion of functions of the DOD to contractors³² and prohibited the use of any appropriated funds to initiate a new installation overseas without advance notification to the appropriations committees.³³ Further, Congress directed that no "funds appropriated by [the Act] shall be available to perform any [A-76 study] if the study being performed exceeds a period of 24 months after initiation of such study with respect to a single function activity or 40 months [for a multi-function activity]."³⁴ Congress also prohibited the sale of the F/A-22 advanced tactical fighter to any foreign country.³⁵

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* The appropriation includes transfer to military personnel appropriations for the reserve component serving in either Title 10 or Title 32 status. *Id.* The transferred funds take on the attributes of the appropriation to which they are transferred with regard to purpose and time. *Id.*

²⁷ *Id.* § 8005. In the fiscal years preceding FY 2005, the level of the DOD's general transfer authority had been between \$2 and \$2.5 billion. *See* Department of Defense Appropriations Act, 2004, Pub. L. No. 108-87, § 8005, 117 Stat. 1054, 1071 (2003); Department of Defense Appropriations Act, 2003, Pub. L. No. 107-248, § 8005, 116 Stat. 1519, 1537 (2002); Department of Defense Appropriations Act, 2002, Pub. L. No. 107-117, § 8005, 115 Stat. 2230, 2247 (2002); Department of Defense Appropriations Act, 2001, Pub. L. No. 106-259, § 8005, 114 Stat. 656, 674 (2000).

²⁸ Department of Defense Appropriations Act, 2006, tit. IX (Additional Appropriations).

²⁹ *Id.* tit VIII, § 8001.

³⁰ *Id.* § 8012.

³¹ *Id.* § 8004, not to include "obligations for support of active duty training of reserve components or summer camp training of the Reserve Officers' Training Corps." *Id.*

³² The Appropriations Act uses the language in the first paragraph of section 8014, "not more than 10 Department of Defense civilian employees . . .," *Id.* § 8014. Note, however, that the Authorization Act language for the same paragraph indicates "10 or more." 2006 Authorization Act, § 341. The Authorization Act amends subsection (a) of the controlling statute, 10 U.S.C.S. § 2461 (LEXIS 2004), while the Appropriations Act does not.

³³ Department of Defense Appropriations Act, 2006, § 8012.

³⁴ *Id.* § 8021.

³⁵ *Id.* § 8067.

Energy Cost Savings

Appropriations that are still available at the end of the fiscal year as a result of energy cost savings realized by DOD remain available for obligation the next fiscal year “to the extent, and for the purposes, provided in section 2865 of title 10, United States Code.”³⁶

Investment Threshold

Congress again directed that O&M funds may be used “to purchase items having an investment unit cost of not more than \$250,000.”³⁷

Limitations of Transfer of Defense Articles and Services

During an international peacekeeping, peace enforcement, or humanitarian assistance operation, Congress has prohibited DOD’s authority to obligate any funds to transfer defense articles and services to other countries or international organizations, “unless the congressional defense committees, the Committee on International Relations of the House of Representative, and the Committee on Foreign Relations of the Senate are notified 15 days in advance of such transfer.”³⁸

Human Rights Vetting Requirement

Congress again placed the requirement for human rights vetting prior to using any appropriated funds for the training of security forces of a foreign country in the Appropriations Act.³⁹ The section prohibits DOD support of such training, “if the [SECDEF] has received credible information from the Department of State that the unit has committed a gross violation of human rights, unless all necessary corrective steps have been taken.”⁴⁰

Government Credit Card Refunds

Congress directed that refunds from Government travel cards, Government Purchase Cards, official travel arranged by Government Contracted Travel Management Centers, “may be credited to operation and maintenance, and research, development, test, and evaluation accounts of the Department of Defense which are current when the funds are received.”⁴¹

Financing and Fielding of Key Army Capabilities

Congress directed DOD and the Department of the Army to “make future budgetary and programming plans to fully finance the Non-Line of Sight Future Force cannon and resupply vehicle program (NLOS-C) in order to field this system in fiscal year 2010, consistent with the broader plan to field the Future Combat System (FCS) in fiscal year 2010.”⁴² Additionally, Congress provided that if the Army is unable to field the FCS by 2010, that the NLOS-C will still be developed independent of the FCS timeline.⁴³ Further, Congress requires the Army to have eight NLOS-C systems by the end of

³⁶ *Id.* § 8031.

³⁷ *Id.* § 8036.

³⁸ *Id.* § 8059.

³⁹ *Id.* § 8069.

⁴⁰ *Id.*

⁴¹ *Id.* § 8074.

⁴² *Id.* § 8096.

⁴³ *Id.*

calendar year 2008.⁴⁴ Finally, Congress dictated that the Army “shall ensure that budgetary and programmatic plans will provide for no fewer than seven (7) Stryker Brigade Combat Teams.”⁴⁵

Promotional Materials for Operations in Iraq and Afghanistan

The SECDEF is authorized to present “promotional materials, to include a United States flag . . . to any member . . . who . . . participates in Operation Enduring Freedom or Operation Iraqi Freedom, along with other recognition items in conjunction with any week-long national observation and day of national celebration, if established by Presidential proclamation. . . .”⁴⁶

Additional and Special Appropriations

Basic Appropriations

Department of Defense-wide, Congress appropriated additional MILPER in an amount exceeding \$5.7 billion⁴⁷ and O&M in an amount exceeding \$800 million,⁴⁸ of which up to \$195 million of no-year funds,⁴⁹ that “may be used to reimburse Pakistan, Jordan, and other key cooperating nations, for logistical, military, and other support provided, or to be provided to United States military operations.”⁵⁰ Congress appropriated additional funding for procurement in an amount exceeding \$7.9 billion and for RDT&E in an amount exceeding \$50 million.⁵¹ Congress also appropriated additional funds for Revolving and Management Funds in the amount of \$2,516,400,000.⁵²

Iraqi Freedom Fund

While their intent to continue funding the Iraqi Freedom Fund remains indefinite, Congress this year appropriated an additional \$4.658 billion for transfer into military personnel, operation and maintenance, OHDACA, procurement, RDT&E, and working capital funds.⁵³ Of this appropriation, Congress further directed that “not less than \$1,360,000,000 shall be available for the Joint [Improvised Explosive Device] Task Force.”⁵⁴

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* § 8122.

⁴⁷ *Id.* tit. IX (Army, \$4,713,245,000; Navy, \$144,000,000; Marine Corps, \$455,000,000; Air Force, \$508,000,000; Army, \$138,755,000; Reserve Personnel, Navy, \$10,000,000; National Guard Personnel, Army, \$234,400,000; National Guard Personnel, Air Force, \$3,200,000).

⁴⁸ *Id.* (Army, \$21,348,886,000; Navy, \$1,810,500,000; Marine Corps, \$1,833,126,000; Air Force, \$2,483,900,000; Defense-Wide, \$805,000,000; Army Reserve, \$48,200,000; Navy Reserve, \$6,400,000; Marine Corps Reserve, \$27,950,000; Air Force Reserve, \$5,000,000; Army National Guard, \$183,000,000; Air National Guard, \$7,200,000).

⁴⁹ These funds are not subject to the regular time requirements of most appropriations and are available until expended.

⁵⁰ *Id.* tit. IX. “Key cooperating nation support” expenditures require the approval of the Secretary of Defense, with the concurrence of the Secretary of State, in coordination with the Director of the Office of Management and Budget, and the fifteen-day prior notification to the appropriate committees. *Id.*

⁵¹ *Id.* (Procurement: Army Aircraft, \$232,100,000; Army Missile, \$55,000,000; Army Weapons and Tracked Vehicles, \$860,190,000; Army Ammunition, \$273,000,000; Other Procurement, Army, \$3,174,900,000; Navy Aircraft, \$138,837,000; Navy Weapons, \$116,900,000; Navy and Marine Corps Ammunition, \$38,885,000; Other Procurement, Navy, \$49,100,000; Marine Corps, \$1,710,145,000; Air Force Aircraft, \$115,300,000; Air Force Missile, \$17,000,000; Other Procurement, Air Force, \$17,500,000; Defense-wide, \$182,075,000; and National Guard and Reserve Equipment, \$1,000,000,000. RDT&E: Army, \$13,100,000; Air Force, \$12,500,000; and Defense-wide, \$25,000,000).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

Drug Interdiction and Counter-Drug Activities

For general drug interdiction and counter-drug activities, Congress appropriated an additional \$27.62 million.⁵⁵
Train and Equip

Congress again made available \$500 million of DOD O&M for use in Iraq and Afghanistan to “train, equip, and provide related assistance only to military or security forces. . . to enhance their capability to combat terrorism and to support United States military operations in Iraq and Afghanistan.”⁵⁶ Train and equip authority may be used to provide “equipment, supplies, services, training, and funding.”⁵⁷

The Commander’s Emergency Response Program

Congress continues to provide funding authority, this year up to \$500 million in DOD O&M, to the Commander’s Emergency Response Program (CERP) for “the purpose of enabling military commanders in Iraq [and Afghanistan] to respond to urgent relief and reconstruction efforts within their areas of responsibility by carrying out programs that will immediately assist the Iraqi [and Afghan] people.”⁵⁸ Congress continues to require DOD to submit quarterly reports and provide guidance to the field.⁵⁹ The most recent guidance was issued in July of 2005.⁶⁰

Force Protection Vehicles

Congress provided for the purchase of up to twenty heavy and light armored vehicles for force protection, “notwithstanding price or other limitations. . . or any other provision of law,”⁶¹ to be paid for with any funding provided to DOD “for operations in Iraq and Afghanistan.”

Lift and Sustain

Congress again provided for the use of DOD O&M for “supplies, support, services, transportation, including airlift and sealift, and other logistical support to coalition forces supporting military and stability operations in Iraq and Afghanistan.”⁶² This authority continues without a specific dollar limitation; however, quarterly reporting on expenditures for lifting and sustaining coalition forces is required.⁶³

⁵⁵ *Id.*

⁵⁶ *Id.* § 9006. This section required committee notification (defense committees, the Committee on International Relations of the House of Representatives, and the Committee on Foreign Relations of the Senate) fifteen days prior to providing the train and equip assistance. *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* § 9007.

⁵⁹ *Id.* The Senate Armed Services Committee explained its expectations in the report accompanying the Bill, as follows:

The provision would require the Secretary to provide quarterly reports to the congressional defense committees on the source, allocation, and use of funds pursuant to this authority. The committee expects the quarterly reports to include detailed information regarding the amount of funds spent, the recipients of the funds, and the specific purposes for which the funds were used. The committee directs that funds made available pursuant to this authority be used in a manner consistent with the CERP guidance that the Under Secretary of Defense (Comptroller) issued in a memorandum dated February 18, 2005. This guidance directs that CERP funds be used to assist the Iraqi and Afghan people in the following representative areas: water and sanitation; food production and distribution; agriculture; electricity; healthcare; education; telecommunications; economic, financial and management improvements; transportation; irrigation; rule of law and governance; civic cleanup activities; civic support vehicles; repair of civic and cultural facilities; and other urgent humanitarian or reconstruction projects.

S. REP. NO. 109-69, at 383 (2005).

⁶⁰ Memorandum, Under Secretary of Defense (Comptroller), to Secretaries of the Military Departments, et al., subject: Commanders’ Emergency Response Program Guidance (27 July 2005).

⁶¹ Department of Defense Appropriations Act, 2006, § 9008.

⁶² *Id.*

⁶³ *Id.* § 9009.

Reporting Requirements

For FY 2006, Congress requires extensive reporting of a “comprehensive set of performance indicators and measures for progress toward military and political stability in Iraq.”⁶⁴ The requirements are extensive and include reporting specific numbers of trained security forces and the numbers of insurgents in Iraq.⁶⁵

Detainee Treatment Act of 2005

This year Congress took the opportunity to enact legislation regarding the treatment of detainees.⁶⁶ The Detainee Treatment Act of 2005 includes guidance on uniform standards regarding interrogation,⁶⁷ the prohibition of “cruel, inhuman, or degrading treatment or punishment of persons under custody or control of the United States Government,”⁶⁸ and the procedures for status reviews of detainees outside of the United States.⁶⁹ The Act also requires the SECDEF to “ensure that all personnel of the Iraqi military forces who are trained by [DoD] personnel and contractor personnel of the [DOD] received training regarding the international obligations and laws applicable to the humane detention of detainees, including protections afforded under the Geneva Conventions and the Convention Against Torture.”⁷⁰

MILITARY QUALITY OF LIFE AND VETERANS AFFAIRS APPROPRIATIONS ACT, 2006

President Bush signed the Military Quality of Life and Veterans Affairs Appropriations Act on 30 September 2005.⁷¹ The Act provides over \$6.5 billion in Military Construction funding,⁷² over \$4 billion in family housing,⁷³ and almost \$1.76 billion for base closure activities.⁷⁴

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2006

On 6 January 2006, the President signed into law the National Defense Authorization Act for FY 2006 (Authorization Act).⁷⁵

⁶⁴ *Id.* § 9010.

⁶⁵ *Id.*

⁶⁶ *Id.* tit. X.

⁶⁷ *Id.* § 1002 (prohibiting DOD personnel from using methods of interrogation on persons in DOD custody not listed in the Army field manual on intelligence interrogation).

⁶⁸ *Id.* § 1003.

⁶⁹ *Id.* § 1005 (directing that the Secretary of Defense submit procedural standards and other reports regarding Guantanamo Bay, Afghanistan, and Iraq).

⁷⁰ *Id.* § 1006.

⁷¹ Pub. L. No. 109-114, 119 Stat. 2372 (2005).

⁷² *Id.* § 2372-2375. Army, \$1,775,260,000 (provides that \$50,000,000 are available for overhead to cover force protection systems in Iraq); Navy and Marine Corps, \$1,157,141,000; Air Force, \$1,288,530,000; Defense-wide, \$1,008,855,000; Army National Guard, \$523,151,000; Air National Guard, \$316,117,000; Army Reserve, \$152,569,000; Naval Reserve, \$46,864,000; and Air Force Reserve, \$105,883,000. Additionally, Congress appropriated funds for the NATO Security Investment Program in the amount of \$206,858,000. *Id.*

⁷³ *Id.* § 2375-2376. Army Family Housing Construction, \$549,636,000; Army Family Housing Operation and Maintenance, \$803,993,000; Navy and Marine Corps Housing Construction, \$218,942,000; Navy and Marine Corps Family Housing Operation and Maintenance, \$588,660,000; Air Force Family Housing Construction, \$1,101,887,000; Air Force Family Housing Operation and Maintenance, \$766,939,000; Family Housing Operation and Maintenance, Defense-wide, \$46,391,000; and Department of Defense Family Housing Improvement Plan, \$2,500,000.

⁷⁴ *Id.* at 2376-2377. Department of Defense Base Closure Account 1990, \$254,827,000; and Department of Defense Base Closure Account 2005, \$1,504,466,000.

⁷⁵ Department of Defense Authorization Act, 2006, Pub. L. No. 109-163, 119 Stat. 3136 (2006) [hereinafter 2006 Authorization Act]

Procurement

Army

Congress authorized the Secretary of the Army to enter into multiyear contracts for the procurement of UH-60 Blackhawk helicopters,⁷⁶ MH-60S Seahawk helicopters,⁷⁷ modernized target acquisition designation sight/pilot night vision sensors for AH-64 Apache helicopters,⁷⁸ and for conversion of the AH-64s to the new AH-64D configuration.⁷⁹

Additionally, Congress directed the Secretary of the Army to provide continuing reports on the Army Modular Force initiative, to include the acquisition plan and requirements for funding for the program.⁸⁰ The Secretary of the Army was also directed that any Army contract for modernization and recapitalization of the fleet of Army tactical wheeled vehicles should be a joint service program with the Marine Corps.⁸¹ Correspondingly, the Navy and Marine Corps are directed to collaborate with the Army should they choose to modernize or recapitalize their wheeled vehicle fleet.⁸²

Air Force

Like the Army, Congress also granted the Air Force the authority to enter into multiyear contract for aircraft, specifically C-17s.⁸³ Additionally, Congress prohibited the retirement of the KC-135W, F-117, and C-130E/H aircraft in fiscal year 2006.⁸⁴ Procurement of any new unmanned aerial vehicle systems (UAV) and component parts for new systems is prohibited; however, new parts can be purchased under existing contracts for existing UAV systems.⁸⁵

Research, Development, Test, and Evaluation

In this section, Congress directed the Comptroller General to continue annual reporting on the Future Combat Systems Program.⁸⁶ Congress further directed that any purchase of the Future Combat Systems Program must be completed under the negotiated procurement procedures, rather than the other transaction authority provisions of Title 10, United States Code, Section 2371.⁸⁷

Reflecting the current joint environment in which DOD operates, Congress directed that some DOD RDT&E projects be undertaken jointly—the Marine Corps-Army Joint Heavy Lift Rotorcraft Program,⁸⁸ the DOD Joint Tactical Radio System,⁸⁹ and a DOD joint combat trauma registry.⁹⁰

⁷⁶ *Id.* § 111.

⁷⁷ *Id.*

⁷⁸ *Id.* § 112.

⁷⁹ *Id.* § 113.

⁸⁰ *Id.* § 115.

⁸¹ *Id.* § 114.

⁸² *Id.*

⁸³ *Id.* § 131.

⁸⁴ *Id.* §§ 132-34. Congress further detailed that any purchase of new C-130J/KC-130J aircraft should be effected using the Federal Acquisition Regulation, Part 15, by using negotiated procurement procedures, rather than under Part 12, as a commercial item acquisition. *Id.* § 135.

⁸⁵ *Id.* § 142.

⁸⁶ *Id.* § 211.

⁸⁷ *Id.* § 212; 10 U.S.C.S § 2371 (LEXIS 2004) (research projects: transactions other than contracts and grants).

⁸⁸ Department of Defense Authorization Act, 2006, § 217.

⁸⁹ *Id.* § 218.

⁹⁰ *Id.* § 256.

Operation and Maintenance

Extensions of Authority

In the Authorization Act, Congress extended various authorities from past years. These include the extension of the authority to provide logistics support and services for weapons systems contractors,⁹¹ the extension of the period for reimbursement for protective gear or health equipment purchased by or for deployed servicemembers,⁹² and the extension of temporary authority for contractor performance of security guard functions.⁹³ The section on security guard functions, originally enacted in FY 2003, is still listed as “temporary,” but has been renewed for at least one more fiscal year.⁹⁴

Commemoration of Armed Forces’ Success in Operation Iraqi Freedom and Operation Enduring Freedom

Congress authorized celebrations in honor of military efforts in Iraq and Afghanistan.⁹⁵ The provision grants the authority to the President to declare a day of celebration to honor servicemembers returning from deployments to Iraq and Afghanistan and to issue a proclamation to the citizens of the United States requesting that they observe the declared day of celebration with ceremonies and activities.⁹⁶ Participation by members of the Armed Forces in these celebrations is also authorized.⁹⁷ Funds provided to DOD may be expended to cover costs of the servicemembers’ participation in these events, but must not exceed \$20 million. In addition, any private contributions made specifically for covering the costs of the participating servicemembers must first be deducted from this \$20 million.⁹⁸

Military Personnel Policy

Grades of the Judge Advocates General

Before the amendment in this year’s authorization act, the language of Title 10, U.S.C., Section 3037(a), stated that

[t]he President, by and with the advice and consent of the Senate, shall appoint the Judge Advocate General, the Assistant Judge Advocate General, and general officers of the Judge Advocate General's Corps, from officers of the Judge Advocate General's Corps, who are recommended by the Secretary of the

⁹¹ *Id.* §331; *see also* Bob Stump National Defense Authorization Act for Fiscal Year 2003, Pub. L. 107-314, Stat. 2521; 10 U.S.C.S. § 2302 (LEXIS 2004).

⁹² Department of Defense Authorization Act, 2006, § 332. The January 2005 issue of *The Army Lawyer* (Contract and Fiscal Law Year in Review Legislative Appendix), explains the background for the authorization, as follows:

The [2005] Authorization Act directs the SECDEF to reimburse military members “for the cost (including any shipping cost) of any protective, safety, or health equipment” purchased by the military member or by another person in the member’s behalf “in anticipation of, or during, the deployment of the member in connection with Operation Enduring Freedom, or Operation Iraqi Freedom” The reimbursement requirement applies only if the SECDEF certifies the equipment was critical to the military member’s protection, safety, or health; the member was not issued the equipment prior to deployment; and the military member purchased the equipment between 11 September 2001 and 31 July 2004. Not later than 120 days following the Act’s enactment, the SECDEF must issue rules to “expedite the provision of reimbursement” Following issuance of the implementation guidance, military members will have one year to submit qualifying claims for reimbursement.

Major Kevin J. Huyser et al., *Contract and Fiscal Law Developments of 2004—The Year in Review*, ARMY LAW., Jan. 2005, at 198 [hereinafter *2004 Year in Review*] (citations omitted).

⁹³ Department of Defense Authorization Act, 2006, § 344; *see also* 2004 Year in Review, *supra* note 93, at 203.

In general, section 2465 of title 10 prohibits the DOD from entering into contracts for security guard (and firefighting) services on installations within the United States.⁹³ The Bob Stump National Defense Authorization Act, 2003, granted the DOD authority to enter into contracts for any “increased performance” of security guard functions due to the terrorist attacks on 11 September 2002, notwithstanding the prohibition under section 2465 of title 10. Congress provided the authority temporarily, with an expiration date of 1 December 2005.

Id. (citing 10 U.S.C.S. § 2465 (LEXIS 2004); the Uniting and Strengthening America by Providing Appropriated Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001; Pub. L. No. 107-314, § 332, 116 Stat. 2458, 2513 (2002))

⁹⁴ Department of Defense Authorization Act, 2006, § 344.

⁹⁵ *Id.* § 378.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

Army. An officer appointed as the Judge Advocate General or Assistant Judge Advocate General normally holds office for four years. However, the President may terminate or extend the appointment at any time. If an officer who is so appointed holds a lower regular grade, he shall be appointed in the regular grade of major general.⁹⁹

The Authorization Act amends that paragraph by replacing the last sentence, in part, with a separate paragraph for each of the Judge Advocates General. For the Army, the paragraph reads, “[t]he Judge Advocate General, while so serving, shall hold a grade *no lower than* major general. An officer appointed as Assistant Judge Advocate General who holds a lower regular grade shall be appointed in the regular grade of major general.”¹⁰⁰ For the Navy, the Judge Advocate General “shall hold a grade not lower than rear admiral, or major general, as appropriate.”¹⁰¹ Finally, for the Air Force, the new paragraph directs that the Judge Advocate General “shall hold a grade not lower than major general.”¹⁰²

Compensation and Other Personnel Benefits

Effective 1 January 2006, the monthly base pay of uniformed service members increased by 3.1 percent,¹⁰³ down from a 3.5 percent increase last fiscal year.¹⁰⁴

Permanent Increase in Length of Time Dependents of Certain Deceased Members May Continue to Occupy Military Family Housing or Receive Basic Allowance for Housing

By amending 37 U.S.C. § 403(1), Congress provided permanent authority for certain dependents to remain in family housing or to receive basic allowance for housing for 365 days instead of 180 days.¹⁰⁵ Prior to this amendment, such authority was only temporary.¹⁰⁶

Bonus and Special Pay and Travel and Transportation Allowances

In addition to extending numerous special pay and bonus programs,¹⁰⁷ Congress focused on amending several provisions of Title 37, United States Code, to provide more benefits for deployed servicemembers and injured servicemembers and their families. Congress authorized the SECDEF to authorize retroactive hostile fire and imminent danger pay,¹⁰⁸ to make available special pay for members rehabilitating from wounds, injuries, and illnesses incurred in a combat operation or

⁹⁹ 10 U.S.C.S. § 3037(a) (LEXIS 2004). The committee report on the amendment to the section explains:

The committee recommends a provision that would raise the statutory grades of the Judge Advocate General's of the Army, Navy, and Air Force to lieutenant general or vice admiral, as appropriate. These three officers would be in addition to the numbers that would otherwise be permitted for their Armed Forces for officers serving on active duty in grades above major general or rear admiral, as the case may be.

The greatly increased operations tempo of the Armed Forces has resulted in an increase in the need for legal advice from uniformed judge advocates in such areas as operational law, international law, the law governing occupied territory, the Geneva Conventions, and related matters. In addition, the system of military justice, administered by the Judge Advocates General, has taken on increased importance. This provision recognizes these developments and the vital importance of the duties of these officers in today's Armed Forces.

S. REP. NO. 109-069, at 312 (2005).

¹⁰⁰ Department of Defense Authorization Act, 2006, § 508 (emphasis added).

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.* § 601.

¹⁰⁴ Ronald W. Reagan National Defense Authorization Act, 2005, § 601, Pub. L. No. 108-375, 118 Stat. 1811 (2004).

¹⁰⁵ See Pub. L. 109-13, 119 Stat. 251, § 1022 (2005).

¹⁰⁶ *Id.*; see also, Pub. L. 109-77, 119 Stat. 2041, § 124 (extending the authority found in Pub. L. 109-13 in a continuing resolution).

¹⁰⁷ Department of Defense Authorization Act, 2006, §§ 621-624. Certain bonus and special pay authorities for among others, reserve forces, health care professionals and nuclear officers are contained in these sections.

¹⁰⁸ *Id.* § 636.

combat zone,¹⁰⁹ to authorize the transportation of family members in connection with the repatriation of members held captive,¹¹⁰ to make permanent the authority to provide travel and transportation allowances for family members to visit hospitalized servicemembers injured in a combat operation or combat zone,¹¹¹ and to provide for additional death gratuity for survivors of certain servicemembers who die on active duty.¹¹²

Acquisition Policy, Acquisition Management, and Related Matters

Congress passed a provision that will undoubtedly be helpful for small businesses. Section 816 prohibits contracting officers from using “tiered evaluations of offers for contracts and for task and delivery orders under contracts”¹¹³ unless the contracting officer:

- (1) has conducted market research in accordance with part 10 of the Federal Acquisition Regulation in order to determine whether or not a sufficient number of small businesses are available to justify limiting competition for the award of such contract or task or delivery order under applicable law and regulations;
- (2) is unable, after conducting market research under paragraph (1), to make the determination described in that paragraph; and
- (3) includes in the contract file a written explanation of why such contracting officer was unable to make such a determination.¹¹⁴

Congress imposed additional controls on procurement in Section 811, “Internal Controls for Procurements on Behalf of the Department of Defense.” Congress mandated that the DOD Inspector General is required to review, among other things, current procurement policies and procedures and internal controls of agencies procuring property and supplies on behalf of DOD.¹¹⁵ In addition, if another agency is found not complying with DOD procurement policy, DOD is prohibited from ordering, purchasing, or otherwise procuring “property or services in an amount in excess of \$100,000” from that agency.¹¹⁶

Congress mandated that the SECDEF, in consultation with the Chairman of the Joint Chiefs of Staff, within a year after the Authorization Act’s enactment, develop a joint policy for contingency contracting during combat operations and post-conflict operations.¹¹⁷ The policy, among other things, must include the designation of a senior commissioned officer in each military department to administer the policy and the assignment of a senior commissioned officer with “appropriate acquisition experience and qualifications to act as the head of contingency contracting during combat operations, post-conflict operations, and contingency operations.”¹¹⁸ A training program must be created by the Defense Acquisition University to train contingency contracting personnel in the following areas:

¹⁰⁹ *Id.* § 642.

¹¹⁰ *Id.* § 653.

¹¹¹ *Id.* § 655.

¹¹² *Id.* § 664. Congress increased the death gratuity in Title 10, Section 1478(a) from \$12,000 to \$100,000 and made provisions in the Section for retroactive payments of the death gratuity under certain circumstances.

¹¹³ *Id.* § 816.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.* § 817.

¹¹⁸ *Id.* Section 817, Joint Policy on Contingency Contracting, details Congress’ intentions for establishing the combat and post-conflict operational policy not later than a year after the date of the enactment of the Authorization Act, and requires various reports, as follows:

(1) Interim report.---- (A) Requirement.--Not later than 270 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives an interim report on contingency contracting. (B) Matters covered.--The report shall include discussions of the following: (i) Progress in the development of the joint policy under subsection (a). (ii) The ability of the Armed Forces to support contingency contracting. (iii) The ability of commanders of combatant commands to request contingency contracting support and the ability of the military departments and the acquisition support agencies to respond to such requests and provide such support, including the availability of rapid acquisition personnel for such support. (iv) The ability of the current civilian and military acquisition workforce to deploy to combat theaters of operations and to conduct contracting activities during combat and during post-conflict, reconstruction, or other contingency operations. (v) The effect of different periods of deployment on continuity in the acquisition process.

(2) Final report.-- Not later than 18 months after the date of the enactment of this Act, the Secretary of Defense shall submit to the committees listed in paragraph (1)(A) a final report on contingency contracting, containing a discussion of the implementation of the joint policy developed under subsection (a), including updated discussions of the matters covered in the interim report.

- i. the use of law, regulations, policies, and directives related to contingency contracting operations;
- ii. the appropriate use of rapid acquisition methods, including the use of exceptions to competition requirements under *section 2304 of title 10, United States Code*, sealed bidding, letter contracts, indefinite delivery indefinite quantity task orders, set asides under section 8(a) of the Small Business Act (*15 U.S.C. 637(a)*), undefinitized contract actions, and other tools available to expedite the delivery of goods and services during combat operations or post-conflict operations;
- iii. the appropriate use of rapid acquisition authority, commanders' emergency response program funds, and other tools unique to contingency contracting; and
- iv. instruction on the necessity for the prompt transition from the use of rapid acquisition authority to the use of full and open competition and other methods of contracting that maximize transparency in the acquisition process. . . .¹¹⁹

Of interest are some of the acquisition provisions that were not included in the final FY 2006 Authorization Act. One Senate committee recommendation would have clarified rapid acquisition authority for the SECDEF to respond to combat emergencies, which would give DOD “greater flexibility,”¹²⁰ and:

[i]n particular would: (1) give the Secretary of Defense authority to address deficiencies that have resulted in combat casualties, even if they are not “combat capability deficiencies” and even if they have not resulted in fatalities; (2) permit the Secretary to delegate his authority under the section to the Deputy Secretary of Defense; and (3) clarify that the category of statutes and regulations that may be waived if necessary to prevent combat casualties include domestic source or content restrictions that would inhibit or impede the rapid acquisition of needed equipment.¹²¹

The Senate committee also recommended a provision that would have required the SECDEF to “maintain a publicly-available website that provides information on instances in which major contractors have been fined, paid penalties or restitution, settled, plead guilty to, or had judgments entered against them in connection with allegations of improper conduct.”¹²² A major contractor was defined in the proposed section as a contractor that received “at least \$100,000,000 in Federal contracts in the most recent fiscal year.”¹²³ In addition, the section would have required reporting on sole source contracts for Iraq reconstruction, “Not later than 120 days after the date of the enactment of this Act.” The report, which would have been the responsibility of the Administrator for Federal Procurement Policy, would have had to include information for “all sole source contracts in excess of \$2,000,000 entered into by executive agencies in connection with Iraq reconstruction from January 1, 2003, through the date of the enactment of this Act.”¹²⁴ Again, however, this provision was not included in the final Authorization Act.

Yet another Senate committee recommendation that was not included in the final Authorization Act would have required DOD to report to Congress a list and description of

each task or delivery order contract or other contract related to security and reconstruction activities in Iraq and Afghanistan in which an audit conducted by an investigative or audit component of the Department of Defense during the 90-day period ending on the date of such report resulted in a finding . . . by an investigative or audit component of the Department of Defense that the contract includes costs that are unsupported, questioned, or both.¹²⁵

Id.

¹¹⁹ *Id.*

¹²⁰ S. REP. NO. 109-069, § 843 (2005).

¹²¹ *Id.*

¹²² *Id.* § 854.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.* § 824.

General Provisions

Transfer Authority

Congress again granted the SECDEF authority to transfer no more than \$3.5 billion of FY 2006 authorizations, provided the SECDEF determines that it is in the national interest and the authorizations are only used for items that have a higher priority than the items from which the authorization is transferred.¹²⁶ This authorization may not be used for an item that has been denied authorization by Congress.¹²⁷ Additionally, Congress increased the general transfer authority level retroactively for FY 2005 from \$3.5 billion¹²⁸ to \$6.18 billion.¹²⁹

Reestablishment of the Electromagnetic Pulse (EMP) Commission

Congress reestablished the EMP commission, originally established in the Fiscal Year 2001 Authorization Act, to “investigate, make recommendations, and report to Congress on the evolving threat to the United States from electromagnetic pulse . . . attack resulting from the detonation of a nuclear weapon or weapons at high altitude.”¹³⁰

Matters Relating to Foreign Nations

Extension of Humanitarian and Civic Assistance Provided to Host Nations in Conjunction with Military Operations

Congress increased the limit on the amount of authority available under Subsection (c)(3) of Section 401 of the United States Code for landmine clearing operations from \$5 million to \$10 million.¹³¹ In this section, Congress also amended Section 401 to include surgical as well as medical, dental, and veterinary care in areas of a country that are rural or underserved by medical, surgical, dental, and veterinary professionals.¹³² Congress also added language to include education, training, and technical assistance in the definition of medical humanitarian assistance.¹³³

Commander’s Emergency Response Program (CERP) Authorization

While only authorizing CERP expenditures on a yearly basis, this year Congress authorized the program for a two-year period. This authorization is for the same amount Congress appropriated in the FY 2006 Appropriations Act (\$500 million) for the urgent relief and reconstruction program.¹³⁴ Congress also continued the requirement for quarterly reports, a requirement also included in the Appropriations Act.¹³⁵

Security and Stabilization Assistance

Under Section 1207, the Secretary of Defense “may provide services to, and transfer defense articles and funds to, the Secretary of State for the purposes of facilitating the provision by the Secretary of State of reconstruction, security, or stabilization assistance to a foreign country.”¹³⁶ The monetary limit for these transfers may not exceed \$100 million in any fiscal year and once transferred, the funds may remain available until expended.¹³⁷ At any time that the SECDEF exercises

¹²⁶ Department of Defense Authorization Act, 2006, § 1001.

¹²⁷ *Id.*

¹²⁸ See Ronald W. Reagan National Defense Authorization Act, 2005, Pub. L. No. 108-375, 118 Stat. 1811 (2004).

¹²⁹ Department of Defense Authorization Act, 2006, § 1003.

¹³⁰ *Id.* § 1052.

¹³¹ *Id.* § 1201.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.* § 1202; see also *supra* note 59 and accompanying text (highlighting the CERP provisions contained in the 2006 Appropriations Act).

¹³⁵ Department of Defense Authorization Act, 2006, § 1202.

¹³⁶ *Id.* § 1207.

¹³⁷ *Id.*

authority under this section, Congress must be notified of what was transferred, the purpose for the transfer, and the type of funds used in the transfer.¹³⁸

Reimbursement of Certain Coalition Nations for Support Provided to United States Military Operations

Congress authorized the SECDEF to reimburse key cooperating nations for logistical and military support provided in conjunction with military operations in Iraq and Afghanistan using Defense-wide O&M.¹³⁹ Total payments may not exceed \$1.5 billion, which is reflected in the 2006 Appropriations Act.¹⁴⁰ Contractual agreements for payment are prohibited under this section and the SECDEF is required to notify Congress fifteen days prior to making any payment.¹⁴¹

Authority to Transfer Defense Articles and Provide Defense Services to the Military and Security Forces of Iraq and Afghanistan

Congress also gave the authority to the SECDEF to

transfer defense articles from the stocks of [DOD] and to provide defense services in connection with the transfer of such defense articles to the military and security forces of Iraq and Afghanistan in order to support the efforts of those forces to restore and maintain peace and security in those countries.¹⁴²

The aggregate value of all transferred articles and services cannot exceed \$500 million.¹⁴³ The transfer of the articles is subject to the limitations and authorities, with some exceptions, as set forth in the Foreign Assistance Act of 1961, Section 516.¹⁴⁴

Prohibition on Procurements from Communist Chinese Military Companies

In the Act, Congress prohibited the SECDEF from procuring certain goods or services from any Communist Chinese military company under a contract or any subcontract at any tier.¹⁴⁵

War-Related Reporting Requirements

This section requires the SECDEF to submit reports detailing procurement and equipment maintenance costs and facility infrastructure costs in Operations Iraqi Freedom, Enduring Freedom, and Noble Eagle to the congressional defense committees.¹⁴⁶

¹³⁸ *Id.*

¹³⁹ *Id.* § 1208.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.* § 1209.

¹⁴³ *Id.*

¹⁴⁴ *Id.* The authorities contained in subsections (b)(1)(B), (e), (f), and (g) of Section 516 do not apply to transfers under this section. See 22 U.S.C.S. § 2321j (LEXIS 2004).

¹⁴⁵ Department of Defense Authorization Act, 2006, § 1211.

¹⁴⁶ *Id.* § 1221.

Quarterly Reports on War Strategy in Iraq

This section requires SECDEF, in coordination with the Central Intelligence Agency, to brief appropriate congressional committees on the “strategy for the war in Iraq, including the intelligence and other measures of evaluation used in determining the progress made in the execution of that strategy.”¹⁴⁷

Report on Civilian Casualties in Afghanistan and Iraq

Congress has mandated that the SECDEF submit to the congressional defense committees a report on records of civilian casualties in Afghanistan and Iraq, to include whether records are kept, and if so, how they are kept, where they are maintained, and what officials are responsible for maintaining the records.¹⁴⁸ Additionally, the report requires the inclusion of any information relating to the circumstances surrounding the casualties, whether the casualties were fatalities or injuries, whether any condolence payment was made to the person or the person’s family, as well as “any other information relating to those casualties.”¹⁴⁹

Purchase of Weapons Overseas for Force Protection Purposes in Countries in Which Combat Operations are Ongoing

Congress amended Title 10 of the U.S. Code by adding Section 127c, which gives authority to the SECDEF, during ongoing military operations in a country, to purchase weapons from “any foreign person, foreign government, international organization, or other entity located in that country” for force protection purposes.¹⁵⁰ The monetary authority in the section is limited to \$15 million per fiscal year. Further, Congress imposed semi-annual reporting requirements upon use of the authority.

Riot Control Agents

In Section 1232 of the Authorization Act, Congress restated the U.S. policy on the use of riot control agents (RCA):

Riot control agents are not chemical weapons and that the President may authorize their use as legitimate, lethal, and non-lethal alternatives to the use of force that, as provided in Executive Order No. 11850 (40 Fed. Reg. 16187) and consistent with the resolution of ratification of the Chemical Weapons Convention, may be employed by members of the Armed Forces in war in defensive military modes to save lives, including the illustrative purposes cited in Executive Order No. 11850.¹⁵¹

Congress also imposed a reporting requirement on the use of RCA to include a description of all DOD materials on the use of and training for the use of RCA, how the use of RCA is consistent with United States policy, a description of all RCA currently used, and a “general description of steps taken or planned to be taken by the Department of Defense to clarify the circumstances under which [RCA] may be used by members of the Armed Forces, among other things.”¹⁵² The report is due no later than 180 days after enactment of the Act.¹⁵³

¹⁴⁷ *Id.* § 1222.

¹⁴⁸ *Id.* § 1224.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* § 1232.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

Military Construction Authorizations

One-Year Extension of Temporary, Limited Authority to use Operation and Maintenance Funds for Construction Projects Outside the United States

The Act once again extended the authority to use operation and maintenance funds for construction outside the United States for temporary operation requirements related to war, national emergency, or contingency requirements.¹⁵⁴ Congress further limited the use of the authority from a cap of \$200 million to the new cap of \$100 million and continued to impose a quarterly reporting requirement.¹⁵⁵

¹⁵⁴ *Id.* § 2809. To extend the authority FY 2006, Congress amended Section 2809(c)(1) of the Military Construction Authorization Act for Fiscal Year 2004, which was previously amended by section 2810 of the Military Construction Authorization Act for Fiscal Year 2005. *Id.*

¹⁵⁵ *Id.*

Announcements

Invitation to the 2006 Basic Intelligence Law Course 5F-F41

The Judge Advocate General's Legal Center and School

July 17-18, 2006

This two day course is for practitioners who are new to the field of intelligence law and is designed to achieve the following objectives:

- a. Introduce new practitioners to the field of intelligence law; provide a historical context with which to view, understand, and apply existing laws, regulations and policies; and provide an overview of the organization, roles, and functions of the intelligence community.
- b. Provide a basic understanding of the legal framework in which the intelligence community operates, to include the principle sources of intelligence law, with a focus on Executive Order 12333, Department of Defense Directive 5240.1, Department of Defense Directive 5240.1-R, and the service regulations which implement these authorities.
- c. Introduce practitioners to principles and mechanisms involved in conducting intelligence oversight.
- d. Provide an introduction to the intelligence disciplines of counterintelligence, human intelligence, and signals intelligence with discussion focused on the unique legal issues and concerns which arise in each field.
- e. Provide practical experience which will enable new practitioners to identify, research, and address basic intelligence related legal issues.

This course, which is co-sponsored by The Judge Advocate General's Legal Center and School and the United States Army Intelligence Command, will be a unique opportunity for new practitioners in the intelligence and operational field to gain exposure to the growing field of intelligence law. The course will provide the basic tools and lay the groundwork necessary for new practitioners to identify and address intelligence related legal issues. Additionally, since the course will be open to representatives from each of the components of the intelligence community, the course will provide an opportunity to interact with representatives from across the intelligence community.

The course is open to military or civilian attorneys employed by the U.S. Government assigned or pending assignment to an intelligence unit or organization, or special operations/mission unit and military attorneys who provide operational law advice to commanders. Attendance is also open to U.S. government employees assigned or pending assignment to positions requiring an understanding of intelligence law as it relates to the investigation of national security cases. This course will be limited to those individuals who have fewer than two years of experience in the intelligence community or in support of intelligence operations. Security clearance required: Secret. This course is classified "SECRET."

The Points of Contact for this course are Ms. Vicki Taylor and Sergeant First Class Michelle Norvell. Ms. Taylor can be contacted by email at vicki.taylor@mi.army.mil. Sergeant First Class Norvell can be contacted by email at michelle.norvell@mi.army.mil. Both Ms. Taylor and Sergeant First Class Norvell can be contacted telephonically at (703) 706-2555.

Attendance is by invitation only. Individuals wishing to attend this course must request an application from Ms. Taylor at the email address above. Failure to adequately address the justification portion of the application form may result in non-selection. **All attendees wishing to participate in the Basic Intelligence Law Course must also enroll in and attend the Advanced Intelligence Law Course from July 19-21, 2006.**

Invitation to the 2006 Advanced Intelligence Law Course 5F-F43

The Judge Advocate General's Legal Center and School

July 19-21, 2006

This course is designed to bring practitioners who are new to the field of intelligence law together with more experienced members of the community to achieve the following objectives:

- a. Provide an opportunity to engage in-depth discussions of emerging issues and specialized areas of intelligence law to include issues surrounding collection of intelligence in the cyber age;
- b. Provide an opportunity to examine intelligence issues which are the object of current national and international debate such as domestic surveillance and domestic collection activities; and
- c. Provide a forum to discuss intelligence reform and the intelligence oversight process.

This course, which is co-sponsored by The Judge Advocate General's Legal Center and School and the United States Army Intelligence Command, will be a unique opportunity for new practitioners in the intelligence and operational fields to interface with more seasoned intelligence law practitioners. It will provide all participants an opportunity to gain exposure to current and anticipated intelligence law issues relevant to the future of the intelligence community. Since the course will be open to representatives from each of the components of the intelligence community, the course will provide an opportunity to interact with representatives from across the intelligence community.

The course is open to military or civilian attorneys employed by the U.S. Government assigned or pending assignment to an intelligence unit or organization, or special operations/mission unit and military attorneys who provide operational law advice to commanders. Attendance is also open to U.S. government employees assigned or pending assignment to positions requiring an understanding of intelligence law as it relates to the investigation of national security cases. Priority of selection will be for those individuals selected to attend the Basic Intelligence Law Course. Security clearance required: Secret. This course is classified "SECRET."

The Points of Contact for this course are Ms. Vicki Taylor and Sergeant First Class Michelle Norvell. Ms. Taylor can be contacted by email at vicki.taylor@mi.army.mil. Sergeant First Class Norvell can be contacted by email at michelle.norvell@mi.army.mil. Both Ms. Taylor and Sergeant First Class Norvell can be contacted telephonically at (703) 706-2555.

Attendance is by invitation only. Individuals wishing to attend this course must request an application from Ms. Taylor at the email address above. Failure to adequately address the justification portion of the application form may result in non-selection.

In order to provide the maximum flexibility and the opportunity to address the most current issues, individual attendees seeking CLE credits will be required to coordinate and process CLE requests directly with their state Bar Associations. The Staff Judge Advocate, US Army INSCOM will provide course outlines, instructor biographies and, if necessary, certify attendance. CLE requests for the Advanced Intelligence Law Course will not be processed by The Judge Advocate General's Legal Center and School.

Appointment of Regimental Historian and Archivist

Fred L. Borch, who retired last year after twenty-five years active duty as an Army judge advocate (JA), assumed duties on 7 March 2006 as the Judge Advocate General's Corps' (JAG Corps) Regimental Historian and Archivist at the Judge Advocate General's Legal Center and School (TJAGLCS). As a result, the Corps now has a permanent focal point for all Regimental history-related activities. In addition to establishing an on-going history program that will capture the history of the Regiment as it unfolds in Afghanistan, Iraq, and future military operations, the Regimental Historian and Archivist is tasked with creating a world-class archive for Army JAG Corps history. This includes collecting, cataloging, and safeguarding documents, photographs, and other items of historical significance at TJAGLCS. Of particular interest are photographs (35mm and high resolution digital) of Army lawyers, legal administrators, and legal specialists in deployed environments, JA After Action Reports, and similar documentary summaries from military operations. Personal narratives from members of the Regiment about their experiences in military operations also are of interest. Consequently, Active and Reserve Component, National Guard, and civilian members of the Regiment—everywhere—are solicited to search their offices, personal file cabinets, and other storage areas for any items of historical interest. You may contact Fred Borch at (434) 971-3249 (DSN 521-3249), Fred.Borch@hqda.army.mil, or Mr. Fred Borch, Regimental Historian and Archivist, TJAGLCS, 600 Massie Road, Charlottesville, Virginia 22903-1781.

CLE News

1. Resident Course Quotas

a. Attendance at resident continuing legal education (CLE) courses at The Judge Advocate General's Legal Center and School, U.S. Army (TJAGLCS), is restricted to students who have confirmed reservations. Reservations for TJAGSA CLE courses are managed by the Army Training Requirements and Resources System (ATRRS), the Army-wide automated training system. If you do not have a confirmed reservation in ATRRS, attendance is prohibited.

b. Active duty service members and civilian employees must obtain reservations through their directorates training office. Reservists or ARNG must obtain reservations through their unit training offices or, if they are non-unit reservists, through the U.S. Army Personnel Center (ARPERCOM), ATTN: ARPC-OPB, 1 Reserve Way, St. Louis, MO 63132-5200.

c. Questions regarding courses should be directed first through the local ATRRS Quota Manager or the ATRRS School Manager, Academic Department at 1 (800) 552-3978, extension 3307.

d. The ATTRS Individual Student Record is available on-line. To verify a confirmed reservation, log into your individual AKO account and follow these instructions:

Go to Self Service, My Education. Scroll to Globe Icon (not the AARTS Transcript Services). Go to ATTRS On-line, Student Menu, Individual Training Record. The training record with reservations and completions will be visible.

If you do not see a particular entry for a course that you are registered for or have completed, see your local ATTRS Quota Manager or Training Coordinator for an update or correction.

e. The Judge Advocate General's School, U.S. Army, is an approved sponsor of CLE courses in all states that require mandatory continuing legal education. These states include: AL, AR, AZ, CA, CO, CT, DE, FL, GA, ID, IN, IA, KS, KY, LA, ME, MN, MS, MO, MT, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, TN, TX, UT, VT, VA, WA, WV, WI, and WY.

2. TJAGLCS CLE Course Schedule (June 2005 - September 2007) (<http://www.jagcnet.army.mil/JAGCNETINTERNET/HOMEPAGES/AC/TJAGSAWEB.NSF/Main?OpenFrameset> (click on Courses, Course Schedule))

Due to implementation of the Basic Officer Leadership Course (BOLC), the dates of all courses scheduled after October 2006 are subject to change. Please check the School web site and the most recent *The Army Lawyer* for the most up-to-date schedule.

ATTRS No.	Course Title	Dates
GENERAL		
5-27-C22	54th Graduate Course	15 Aug 05 – thru 25 May 06
5-27-C22	55th Graduate Course	14 Aug 06 – thru 24 May 07
5-27-C22	56th Graduate Course	13 Aug 07 – thru 23 May 08
5-27-C20	169th Basic Course	3 Jan – 27 Jan 06 (Phase I – Ft. Lee) 27 Jan – 7 Apr 06 (Phase II – TJAGSA)
5-27-C20	170th Basic Course	30 May – 23 Jun 06 (Phase I – Ft. Lee) 23 Jun – 31 Aug 06 (Phase II – TJAGSA)
*5-27-C20	171st Basic Course	22 Oct – 3 Nov 06 (Phase I – Ft. Lee) 3 Nov – 31 Jan 06 (Phase II – TJAGSA)
5-27-C20	172d Basic Course	4 Feb – 16 Feb 07 (Phase I – Ft. Lee) 16 Feb – 2 May 07 (Phase II – TJAGSA)
5F-F70	37th Methods of Instruction Course	20 – 21 Jul 06
5F-F70	38th Methods of Instruction Course	19 – 1 Jul 07

5F-F1	191st Senior Officers Legal Orientation Course	27 – 31 Mar 06
5F-F1	192d Senior Officers Legal Orientation Course	12 – 16 Jun 06
5F-F1	193d Senior Officers Legal Orientation Course	11 – 15 Sep 06
5F-F1	194th Senior Officers Legal Orientation Course	13 – 17 Nov 06
5F-F1	195th Senior Officers Legal Orientation Course	5 – 9 Feb 07
5F-F1	196th Senior Officers Legal Orientation Course	26 – 30 Mar 07
5F-F1	197th Senior Officers Legal Orientation Course	11 – 15 Jun 07
5F-F1	198th Senior Officers Legal Orientation Course	10 – 14 Sep 07
5F-F3	13th RC General Officers Legal Orientation Course	24 – 26 Jan 07
5F-F52	36th Staff Judge Advocate Course	5 – 9 Jun 06
5F-F52	37th Staff Judge Advocate Course	4 – 8 Jun 07
5F-F52-S	9th Staff Judge Advocate Team Leadership Course	5 – 7 Jun 06
5F-F52-S	10th Staff Judge Advocate Team Leadership Course	4 – 6 Jun 07
5F-F55	2007 JAOAC (Phase II)	7 – 19 Jan 07
5F-JAG	2006 JAG Annual CLE Workshop	2 – 6 Oct 06
JARC-181	2006 JA Professional Recruiting Seminar	11 – 14 Jul 06
JARC-181	2007 JA Professional Recruiting Seminar	17 – 20 Jul 07
ADMINISTRATIVE AND CIVIL LAW		
5F-F21	5th Advanced Law of Federal Employment Course	25 – 27 Oct 06
5F-F22	60th Law of Federal Employment Course	23 – 27 Oct 06
5F-F23	58th Legal Assistance Course	15 – 19 May 06
5F-F23	59th Legal Assistance Course	30 Oct – 3 Nov 06
5F-F23	60th Legal Assistance Course	14 – 18 May 07
5F-F24	30th Admin Law for Military Installations Course	13 – 17 Mar 06
5F-F24	31st Admin Law for Military Installations Course	26 Feb – 2 Mar 07
5F-F28	Tax Year 2006 Basic Income Tax CLE	11 – 15 Dec 06
5F-F29	24th Federal Litigation Course	31 Jul – 4 Aug 06
5F-F29	25th Federal Litigation Course	30 Jul – 3 Aug 07
5F-F202	4th Ethics Counselors Course	17 – 21 Apr 06
5F-F202	5th Ethics Counselors Course	16 – 20 Apr 07
5F-F24E	2006 USAREUR Administrative Law CLE	11 – 14 Sep 06
5F-F24E	2007 USAREUR Administrative Law CLE	10 – 13 Sep 07
5F-F26E	2006 USAREUR Claims Course	27 Nov – 1 Dec 06
5F-F28E	Tax Year 2006 USAREUR Basic Income Tax CLE	4 – 8 Dec 06
5F-F28P	Tax Year 2006 PACOM Basic Income Tax CLE	8 – 12 Jan 07

CONTRACT AND FISCAL LAW		
5F-F10	156th Contract Attorneys Course	17 – 28 Jul 06
5F-F10	157th Contract Attorneys Course	23 Jul – 3 Aug 07
5F-F11	2006 Government Contract Law Symposium	5 – 8 Dec 06
5F-F12	74th Fiscal Law Course	1 – 5 May 06
5F-F12	75th Fiscal Law Course	30 Oct – 3 Nov 06
5F-F12	76th Fiscal Law Course	30 Apr – 4 May 07
5F-F13	2d Operational Contracting Course	10 – 14 Apr 06
5F-F13	3d Operational Contracting Course	12 – 16 Mar 07
5F-F101	7th Procurement Fraud Course	31 May – 2 Jun 06
5F-F102	6th Contract Litigation Course	16 – 20 Apr 07
5F-F103	7th Advanced Contract Law	12 – 14 Apr 06
5F-F15E	2007 USAREUR Contract & Fiscal Law CLE	27 – 30 Mar 07
N/A	2007 Maxwell AFB Fiscal Law Course	5 – 8 Feb 07
CRIMINAL LAW		
5F-F31	12th Military Justice Managers Course	21 – 25 Aug 06
5F-F31	13th Military Justice Managers Course	20 – 24 Aug 07
5F-F33	49th Military Judge Course	24 Apr – 12 May 06
5F-F33	50th Military Judge Course	23 Apr – 11 May 07
5F-F34	25th Criminal Law Advocacy Course	13 – 24 Mar 06
5F-F34	26th Criminal Law Advocacy Course	11 – 22 Sep 06
5F-F34	27th Criminal Law Advocacy Course	12 – 23 Mar 07
5F-F34	28th Criminal Law Advocacy Course	10 – 21 Sep 07
5F-F35	29th Criminal Law New Developments Course	29 Nov – 2 Dec 05
5F-F35	30th Criminal Law New Developments Course	14 – 17 Nov 06
5F-301	9th Advanced Advocacy Training	16 – 19 May 06
5F-301	10th Advanced Advocacy Training	15 – 18 May 07
INTERNATIONAL AND OPERATIONAL LAW		
5F-F42	86th Law of War Course	10 Jul – 14 Jul 06
5F-F42	87th Law of War Course	29 Jan – 2 Feb 07
5F-F42	88th Law of War Course	16 – 20 Jul 07
5F-F44	1st Legal Aspects of Information Operations Course	26 – 30 Jun 06
5F-F44	2d Legal Aspects of Information Operations Course	25 – 29 Jun 07
5F-F45	6th Domestic Operational Law Course	30 Oct – 3 Nov 06
5F-F47	45th Operational Law Course	27 Feb – 10 Mar 06
5F-F47	46th Operational Law Course	31 Jul – 11 Aug 06
5F-F47	47th Operational Law Course	26 Feb – 9 Mar 07
5F-F47	48th Operational Law Course	30 Jul – 10 Aug 07

LEGAL ADMINISTRATORS COURSES		
7A-270A1	17th Legal Administrators Course	19 – 23 Jun 06
7A-270A1	18th Legal Administrators Course	18 – 22 Jun 07
7A-270A2	7th JA Warrant Officer Advanced Course	10 Jul – 4 Aug 06
7A-270A2	8th JA Warrant Officer Advanced Course	9 Jul – 3 Aug 07
7A-270A0	13th JA Warrant Officer Basic Course	30 May – 23 Jun 06
7A-270A0	14th JA Warrant Officer Basic Course	29 May – 22 Jun 07
PARALEGAL AND COURT REPORTING COURSES		
512-27DC4	11th Speech Recognition Training	23 Oct – 3 Nov 06
512-27DC5	19th Court Reporter Course	30 Jan – 31 Mar 06
512-27DC5	20th Court Reporter Course	24 Apr – 23 Jun 06
512-27DC5	21st Court Reporter Course	31 Jul – 29 Sep 06
512-27DC5	22d Court Reporter Course	29 Jan – 30 Mar 07
512-27DC5	23d Court Reporter Course	23 Apr – 22 Jun 07
512-27DC5	24th Court Reporter Course	30 Jul – 28 Sep 07
512-27DC6	7th Court Reporting Symposium	30 Oct – 3 Nov 06
512-27D/20/30	17th Law for Paralegal NCOs Course	27 – 31 Mar 06
512-27D/20/30	18th Law for Paralegal NCOs Course	26 Mar – 6 Apr 07
512-27DCSP	2d Combined Sr. Paralegal NCO Course	12 – 16 Jun 06
512-27DCSP	3d Combined Sr. Paralegal NCO Course	11 – 15 Jun 07

3. Naval Justice School and FY 2006 Course Schedule

Please contact Monique E. L. Cover, Other Services Quota Manager/Analyst, SRA International, Inc., Naval Personnel Development Command, Code N72, NOB, 9549 Bainbridge Ave., N-19, Room 121, at (757) 444-2996, extension 3610 or DSN 564-2996, extension 3610, for information about the courses.

Naval Justice School Newport, RI		
CDP	Course Title	Dates
0257	Lawyer Course (020)	17 Jan – 17 Mar 06
0257	Lawyer Course (030)	5 Jun – 4 Aug 06
0257	Lawyer Course (040)	7 Aug – 6 Oct 06
NA	Brigade Oriented Legal Team (010)	20 – 24 Mar 06 (USMC)
NA	Brigade Oriented Legal Team (030)	7 – 11 Aug 06 (NJS)
0259	Legal Officer Course (202)	12 – 30 Jun 06
900B	Reserve Lawyer Course (010)	1 – 5 May 06
900B	Reserve Lawyer Course (020)	11 – 15 Sep 06
914L	Law of Naval Operations (010)	8 – 12 May 06
914L	Law of Naval Operations (020)	18 – 22 Sep 06
850T	SJA/E-Law Course (010)	30 May – 9 Jun 06

850T	SJA/E-Law Course (020)	24 Jul – 4 Aug 06
786R	Advanced SJA/Ethics (010)	27 – 31 Mar 06 (San Diego)
786R	Advanced SJA/Ethics (020)	24 – 28 Apr 06 (Norfolk)
850V	Law of Military Operations (010)	12 – 23 Jun 06
961D	Military Law Update Workshop (Officer) (010)	20 – 21 May 06 (East)
961D	Military Law Update Workshop (Officer) (020)	17 – 18 Jun 06 (West)
961M	Effective Courtroom Communications	27 – 31 Mar 06 (San Diego)
961J	Defending Complex Cases (010)	17 – 21 Jul 06
525N	Prosecuting Complex Cases (010)	10 – 14 Jul 06
4048	Estate Planning (010)	14 – 18 Aug 06
7487	Family Law/Consumer Law (010)	22 – 26 May 06
7485	Litigation National Security (010)	6 – 8 Mar 06 (Washington, DC)
748K	National Institute of Trial Advocacy (010)	24 – 28 Oct 06 (Camp Lejeune)
748K	National Institute of Trial Advocacy (020)	30 Jan – 3 Feb 06 (San Diego)
748K	National Institute of Trial Advocacy (030)	22 – 26 May 06 (Hawaii)
748B	Naval Legal Service Command Senior Officer Leadership (010)	21 – 25 Aug 06
3938	Computer Crimes (010)	3 – 7 Apr 06
0258	Senior Officer (NewPort) (030)	13 – 17 Mar 06
0258	Senior Officer (NewPort) (040)	8 – 12 May 06
0258	Senior Officer (NewPort) (050)	10 – 14 Jun 06
0258	Senior Officer (NewPort) (060)	14 – 18 Aug 06
0258	Senior Officer (NewPort) (070)	25 – 29 Sep 06
2622	Senior Officer (Fleet) (050)	27 – 31 Mar 06 (Camp Lejeune)
2622	Senior Officer (Fleet) (060)	3 – 7 Apr 06 (Quantico)
2622	Senior Officer (Fleet) (070)	17 – 21 Apr 06 (Pensacola)
2622	Senior Officer (Fleet) (080)	8 – 12 May 06 (Pensacola)
2622	Senior Officer (Fleet) (090)	10 – 14 Jul 06 (Pensacola)
2622	Senior Officer (Fleet) (100)	28 Aug – 1 Sep 06 (Pensacola)
7878	Legal Assistance Paralegal Course (010)	22 – 26 May 06
3090	Legalman Course (010)	17 Jan – 17 Mar 06
932V	Coast Guard Legal Technician Course (010)	11 – 22 Sep 06
846L	Senior Legalman Leadership Course (010)	24 – 28 Jul 06
049N	Reserve Legalman Course (Phase I) (010)	10 – 21 Apr 06
056L	Reserve Legalman Course (Phase II) (010)	24 Apr – 5 May 06
846M	Reserve Legalman Course (Phase III) (010)	8 – 19 May 06

5764	LN/Legal Specialist Mid-Career Course (020)	24 Apr – 5 May 06
961G	Military Law Update Workshop (Enlisted) (010)	TBD
961G	Military Law Update Workshop (Enlisted) (020)	TBD
4040	Paralegal Research & Writing (010)	20 – 31 Mar 06 (Newport)
4040	Paralegal Research & Writing (020)	24 Apr – 5 May 06 (Norfolk)
4040	Paralegal Research & Writing (030)	17 – 28 Jul 06 (San Diego)
4046	SJA Legalman (020)	30 May – 9 Jun 06 (Newport)
627S	Senior Enlisted Leadership Course (090)	21 – 23 Mar 06 (Hawaii)
627S	Senior Enlisted Leadership Course (100)	4 – 6 Apr 06 (Bremerton)
627S	Senior Enlisted Leadership Course (110)	12 – 14 Apr 06 (Naples)
627S	Senior Enlisted Leadership Course (120)	2 – 4 May 06 (San Diego)
627S	Senior Enlisted Leadership Course (130)	22 – 24 May 06 (Norfolk)
627S	Senior Enlisted Leadership Course (140)	19 -21 Jul 06 (Millington)
627S	Senior Enlisted Leadership Course (150)	1 – 3 Aug 06 (San Diego)
627S	Senior Enlisted Leadership Course (160)	16 – 18 Aug 06 (Norfolk)
627S	Senior Enlisted Leadership Course (170)	12 – 14 Sep 06 (Pendleton)
Naval Justice School Detachment Norfolk, VA		
0376	Legal Officer Course (030)	6 – 24 Mar 06
0376	Legal Officer Course (040)	24 Apr – 12 May 06
0376	Legal Officer Course (050)	5 – 23 Jun 06
0376	Legal Officer Course (060)	24 Jul – 11 Aug 06
0376	Legal Officer Course (070)	11 – 29 Sep 06
0379	Legal Clerk Course (030)	23 Jan – 3 Feb 06
0379	Legal Clerk Course (040)	6 –17 Mar 06
0379	Legal Clerk Course (050)	3 – 14 Apr 06
0379	Legal Clerk Course (060)	5 – 16 Jun 06
0379	Legal Clerk Course (070)	31 Jul – 11 Aug 06
0379	Legal Clerk Course (080)	11 – 22 Sep 06
3760	Senior Officer Course (040)	27 Feb – 3 Mar 06
3760	Senior Officer Course (050)	15 –19 May 06
3760	Senior Officer Course (060)	26 – 30 Jun 06
3760	Senior Officer Course (070)	17 – 21 Jul 06 (Millington)
3760	Senior Officer Course (080)	28 Aug – 1 Sep 06
4046	Military Justice Course for SKA/Convening Authority/Shipboard Legalman (030)	10 – 21 Jul 06
Naval Justice School Detachment San Diego, CA		
947H	Legal Officer Course (040)	27 Feb – 17 Mar 06
947H	Legal Officer Course (050)	8 – 26 May 06
947H	Legal Officer Course (060)	12 – 30 Jun 06
947H	Legal Officer Course (070)	14 Aug – 1 Sep 06
947J	Legal Clerk Course (040)	27 Feb – 10 Mar 06
947J	Legal Clerk Course (050)	17 – 28 Apr 06
947J	Legal Clerk Course (060)	8 – 19 May 06
947J	Legal Clerk Course (070)	12 – 23 Jun 06
947J	Legal Clerk Course (080)	14 – 25 Aug 06

3759	Senior Officer Course (050)	3 – 7 Apr 06 (Bremerton)
3759	Senior Officer Course (060)	24 – 28 Apr 06 (San Diego)
3759	Senior Officer Course (070)	5 – 9 Jun 06 (San Diego)
3759	Senior Officer Course (080)	24 – 28 Jul 06 (San Diego)
3759	Senior Officer Course (090)	11 – 15 Sep 06 (Pendleton)

4. Air Force Judge Advocate General School Fiscal Year 2006 Course Schedule

Please contact Jim Whitaker, Air Force Judge Advocate General School, 150 Chennault Circle, Maxwell AFB, AL 36112-5712, commercial telephone (334) 953-2802, DSN 493-2802, fax (334) 953-4445) for information about attending the listed courses.

Air Force Judge Advocate General School Maxwell AFB, AL	
Course Title	Dates
Judge Advocate Staff Officer Course, Class 06-A	13 Feb – 14 Apr 06
Paralegal Craftsman Course, Class 06-B	22 Feb – 28 Mar 06
Paralegal Apprentice Course, Class 06-C	3 Mar – 14 Apr 06
Accident Investigation Board Legal Advisors' Course, Class 06-A	19 – 21 Apr 06
Advanced Trial Advocacy Course, Class 06-A	24 – 28 Apr 06
Military Judges' Seminar, Class 06-A	28 – 31 Mar 06
Paralegal Apprentice Course, Class 06-D	24 Apr – 6 Jun 06
Military Justice Administration Course, Class 06-A	1 – 5 May 06
Reserve Forces Judge Advocate Course, Class 06-B	8 – 12 May 06
Advanced Labor & Employment Law Course, Class 06-A	8 – 10 May 06
Operations Law Course, Class 06-A	15 – 25 May 06
Negotiation & Appropriate Dispute Resolution Course, Class 06-A	22 – 26 May 06
Air National Guard Annual Survey of the Law (Class 06-A & B) (Off-Site)	2 – 3 Jun 06
Air Force Reserve Annual Survey of the Law (Class 06-A & B) (Off-Site)	2 – 3 Jun 06
Staff Judge Advocate Course, Class 06-A	12 – 23 Jun 06
Law Office Management Course, Class 06-A	12 – 23 Jun 06
Paralegal Apprentice Course, Class 06-E	19 Jun – 1 Aug 06
Environmental Law Update Course, Class 06-A	28 – 30 Jun 06
Computer Legal Issues Course, Class 06-A	10 – 14 Jul 06
Legal Aspects of Information Operations Law Course, Class 06-A	12 – 14 Jul 06

Reserve Forces Paralegal Course, Class 06-A	17 – 28 Jul 06
Judge Advocate Staff Officer Course, Class 06-C	17 Jul – 15 Sep 06
Paralegal Craftsman Course, Class 06-C	1 Aug – 8 Sep 06
Paralegal Apprentice Course, Class 06-F	14 Aug – 26 Sep 06
Trial & Defense Advocacy Course, Class 06-B	18 – 29 Sep 06

5. Civilian-Sponsored CLE Courses

For additional information on civilian courses in your area, please contact one of the institutions listed below:

- AAJE: American Academy of Judicial Education
P.O. Box 728
University, MS 38677-0728
(662) 915-1225
- ABA: American Bar Association
750 North Lake Shore Drive
Chicago, IL 60611
(312) 988-6200
- AGACL: Association of Government Attorneys in
Capital Litigation
PMB-102
122 North 2nd Street, Suite A
Phoenix, AZ 85004-2304
(623) 979-4846
- ALIABA: American Law Institute-American Bar Association
Committee on Continuing Professional Education
4025 Chestnut Street
Philadelphia, PA 19104-3099
(800) CLE-NEWS or (215) 243-1600
- APRI: American Prosecutors Research Institute
99 Canal Center Plaza, Suite 510
Alexandria, VA 22313
(703) 549-9222
- ASLM: American Society of Law and Medicine
Boston University School of Law
765 Commonwealth Avenue
Boston, MA 02215
(617) 262-4990
- CLA: Computer Law Association, Inc.
3028 Javier Road, #402
Fairfax, VA 22031
(703) 560-7747
- CLESN: CLE Satellite Network
920 Spring Street
Springfield, IL 62704
(217) 525-0744
(800) 521-8662

FBA: Federal Bar Association
2215 M Street NW
Washington, DC 20037
(202) 785-1614

FB: The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300
(850) 561-5600
(800) 342-8060 (toll free)

GICLE: The Institute of Continuing Legal Education
P.O. Box 1885
Athens, GA 30603
(706) 369-5664

GII: Government Institutes, Inc.,
an ABS Group Inc. Company
4 Research Place, Suite 200
Rockville, MD 20850-3226
(301) 921-2345

GWU: Government Contracts Program
The George Washington University
National Law Center
2020 K Street, NW, Room 2107
Washington, DC 20052
(202) 994-5272

IICLE: Illinois Institute for CLE
2395 W. Jefferson Street
Springfield, IL 62702
(217) 787-2080

LRP: LRP Publications
1901 N Moore Street
Alexandria, VA 22209
(703) 516-7002

LSU: Louisiana State University
Center on Continuing Professional Development
Paul M. Herbert Law Center
Baton Rouge, LA 70803-1000
(504) 388-5837

NCDA: National College of District Attorneys
University of South Carolina
1600 Hampton Street, Suite 414
Columbia, SC 29208
(803) 705-5095

NDAA National District Attorneys Association
National Advocacy Center
1620 Pendleton Street
Columbia, SC 29201
(703) 549-9222

NITA: National Institute for Trial Advocacy
1507 Energy Park Drive
St. Paul, MN 55108

(612) 644-0323 in (MN and AK)
(800) 225-6482

NJC: National Judicial College
Judicial College Building
University of Nevada
Reno, NV 89557

NMTLA: New Mexico Trial Lawyers' Association
P.O. Box 301
Albuquerque, NM 87103
(505) 243-6003

PBI: Pennsylvania Bar Institute
5080 Ritter Road
Mechanicsburg, PA 17055
(717) 796-0804
(800) 932-4637

PLI: Practicing Law Institute
810 Seventh Avenue
New York, NY 10019
(212) 765-5700

TBA: Tennessee Bar Association
221 Fourth Avenue North, Suite 400
Nashville, TN 37219-2198
(615) 383-7421

TLS: Tulane Law School
Tulane University CLE
8200 Hampson Avenue, Suite 300
New Orleans, LA 70118
(504) 865-5900

UMLC: University of Miami Law Center
P.O. Box 248087
Coral Gables, FL 33124
(305) 284-4762

UT: The University of Texas School of Law
Department of Continuing Legal Education
727 East 26th Street
Austin, TX 78705
(512) 472-1177

VCLE: University of Virginia School of Law
Trial Advocacy Institute
P.O. Box 4468
Charlottesville, VA 22905

6. Phase I (Correspondence Phase), Deadline for RC-JAOAC 2007

The suspense for submission of all RC-JAOAC Phase I (Correspondence Phase) materials is *NLT 2400, 1 November 2006*, for those judge advocates who desire to attend Phase II (Resident Phase) at TJAGLCS in January 2007. This requirement includes submission of all JA 151, Fundamentals of Military Writing, exercises.

This requirement is particularly critical for some officers. The 2007 JAOAC will be held in January 2007, and is a prerequisite for most judge advocate captains to be promoted to major.

A judge advocate who is required to retake any subcourse examinations or “re-do” any writing exercises must submit the examination or writing exercise to the Non-Resident Instruction Branch, TJAGLCS, for grading by the same deadline (1 November 2006). If the student receives notice of the need to re-do any examination or exercise after 1 October 2006, the notice will contain a suspense date for completion of the work.

Judge advocates who fail to complete Phase I correspondence courses and writing exercises by 1 November 2006 will not be cleared to attend the 2007 JAOAC. If you have not received written notification of completion of Phase I of JAOAC, you are not eligible to attend the resident phase.

If you have any additional questions, contact LTC Jeff Sexton, commercial telephone (434) 971-3357, or e-mail jeffrey.sexton@hqda.army.mil

7. Mandatory Continuing Legal Education Jurisdiction and Reporting Dates

State	Local Official	CLE Requirements
Alabama**	Director of CLE AL State Bar 415 Dexter Ave. Montgomery, AL 36104 (334) 269-1515 http://www.alabar.org/	-Twelve hours per year. -Military attorneys are exempt but must declare exemption. -Reporting date: 31 December.
Arizona	Administrative Assistant State Bar of AZ 111 W. Monroe St., Ste. 1800 Phoenix, AZ 85003-1742 (602) 340-7328 http://www.azbar.org/AttorneyResources/mcle.asp	-Fifteen hours per year, three hours must be in legal ethics. -Reporting date: 15 September.
Arkansas	Secretary Arkansas CLE Board Supreme Court of AR 120 Justice Building 625 Marshall Little Rock, AR 72201 (501) 374-1855 http://courts.state.ar.us/clerules/htm	-Twelve hours per year, one hour must be in legal ethics. -Reporting date: 30 June.
California*	Director Office of Certification The State Bar of CA 180 Howard Street San Francisco, CA 94102 (415) 538-2133 http://calbar.org	-Twenty-five hours over three years, four hours required in ethics, one hour required in substance abuse and emotional distress, one hour required in elimination of bias. -Reporting date/period: Group 1 (Last Name A-G) 1 Feb 01-31 Jan 04 and every thirty-six months thereafter) Group 2 (Last Name H-M) 1 Feb 00 - 31 Jan 03 and every thirty-six months thereafter)

Group 3 (Last Name N-Z) 1 Feb 02 - 31 Jan 05 and every thirty-six months thereafter).

Colorado	Executive Director CO Supreme Court Board of CLE & Judicial Education 600 17th St., Ste., #520S Denver, CO 80202 (303) 893-8094 http://www.courts.state.co.us/cle/cle.htm	-Forty-five hours over three year period, seven hours must be in legal ethics. -Reporting date: Anytime within three-year period.
Delaware	Executive Director Commission on CLE 200 W. 9th St., Ste. 300-B Wilmington, DE 19801 (302) 577-7040 http://courts.state.de.us/cle/rules.htm	-Twenty-four hours over two years including at least four hours in Enhanced Ethics. See website for specific requirements for newly admitted attorneys. -Reporting date: Period ends 31 December.
Florida**	Course Approval Specialist Legal Specialization and Education The FL Bar 650 Apalachee Parkway Tallahassee, FL 32399-2300 (850) 561-5842 http://www.flabar.org/newflabar/memberservices/certify/blse600.html	-Thirty hours over a three year period, five hours must be in legal ethics, professionalism, or substance abuse. -Active duty military attorneys, and out-of-state attorneys are exempt. -Reporting date: Every three years during month designated by the Bar.
Georgia	GA Commission on Continuing Lawyer Competency 800 The Hurt Bldg. 50 Hurt Plaza Atlanta, GA 30303 (404) 527-8712 http://www.gabar.org/ga_bar/frame7.htm	-Twelve hours per year, including one hour in legal ethics, one hour professionalism and three hours trial practice. -Out-of-state attorneys exempt. -Reporting date: 31 January.
Idaho	Membership Administrator ID State Bar P.O. Box 895 Boise, ID 83701-0895 (208) 334-4500 http://www.state.id.us/isb/mcle_rules.htm	-Thirty hours over a three year period, two hours must be in legal ethics. -Reporting date: 31 December. Every

		third year determined by year of admission.
Indiana	Executive Director IN Commission for CLE Merchants Plaza 115 W. Washington St. South Tower #1065 Indianapolis, IN 46204-3417 (317) 232-1943 http://www.state.in.us/judiciary/courtrules/admiss.pdf	-Thirty-six hours over a three year period (minimum of six hours per year), of which three hours must be legal ethics over three years. -Reporting date: 31 December.
Iowa	Executive Director Commission on Continuing Legal Education State Capitol Des Moines, IA 50319 (515) 246-8076	-Fifteen hours per year, two hours in legal ethics every two years. -Reporting date: 1 March.
Kansas	Executive Director CLE Commission 400 S. Kansas Ave., Suite 202 Topeka, KS 66603 (785) 357-6510 http://www.kscle.org	-Twelve hours per year, two hours must be in legal ethics. -Attorneys not practicing in Kansas are exempt. -Reporting date: Thirty days after CLE program, hours must be completed in compliance period 1 July to 30 June.
Kentucky	Director for CLE KY Bar Association 514 W. Main St. Frankfort, KY 40601-1883 (502) 564-3795 http://www.kybar.org/clerules.htm	-Twelve and one-half hours per year, two hours must be in legal ethics, mandatory new lawyer skills training to be taken within twelve months of admissions. -Reporting date: June 30.
Louisiana**	MCLE Administrator LA State Bar Association 601 St. Charles Ave. New Orleans, LA 70130 (504) 619-0140 http://www.lsba.org/html/rule_XXX.html	-Fifteen hours per year, one hour must be in legal ethics and one hour of professionalism every year. -Attorneys who reside out-of-state and do not practice in state are exempt. -Reporting date: 31 January.
Maine	Administrative Director P.O. Box 527 August, ME 04332-1820	-Eleven hours per year, at least one hour in the area of

(207) 623-1121
<http://www.mainebar.org/cle.html>

professional responsibility is recommended but not required.
-Members of the armed forces of the United States on active duty; unless they are practicing law in Maine.
-Report date: July.

Minnesota
Director
MN State Board of CLE
25 Constitution Ave., Ste. 110
St. Paul, MN 55155
(651) 297-7100
<http://www.mbcle.state.mn.us/>

-Forty-five hours over a three-year period, three hours must be in ethics, every three years and two hours in elimination of bias.
-Reporting date: 30 August.

Mississippi**
CLE Administrator
MS Commission on CLE
P.O. Box 369
Jackson, MS 39205-0369
(601) 354-6056
<http://www.msbar.org/meet.html>

-Twelve hours per year, one hour must be in legal ethics, professional responsibility, or malpractice prevention.
-Military attorneys are exempt.
-Reporting date: 31 July.

Missouri
Director of Programs
P.O. Box 119
326 Monroe
Jefferson City, MO 65102
(573) 635-4128
<http://www.mobar.org/mobaracle/index.htm>

-Fifteen hours per year, three hours must be in legal ethics every three years.
-Attorneys practicing out-of-state are exempt but must claim exemption.
-Reporting date: Report period is 1 July - 30 June. Report must be filed by 31 July.

Montana
MCLE Administrator
MT Board of CLE
P.O. Box 577
Helena, MT 59624
(406) 442-7660, ext. 5
<http://www.montana.org>

-Fifteen hours per year.
-Reporting date: 1 March.

Nevada
Executive Director
Board of CLE
295 Holcomb Ave., Ste. A
Reno, NV 89502
(775) 329-4443
<http://www.nvbar.org>

-Twelve hours per year, two hours must be in legal ethics and professional conduct.
-Reporting date: 1 March.

New Hampshire**	Asst to NH MCLE Board MCLE Board 112 Pleasant St. Concord, NH 03301 (603) 224-6942, ext. 122 http://www.nhbar.org	-Twelve hours per year, two hours must be in ethics, professionalism, substance abuse, prevention of malpractice or attorney-client dispute, six hours must come from attendance at live programs out of the office, as a student. -Reporting date: Report period is 1 July - 30 June. Report must be filed by 1 August.
New Mexico	Administrator of Court Regulated Programs P.O. Box 87125 Albuquerque, NM 87125 (505) 797-6056 http://www.nmbar.org/mclerules.htm	-Fifteen hours per year, one hour must be in legal ethics. -Reporting period: January 1 - December 31; due April 30.
New York*	Counsel The NY State Continuing Legal Education Board 25 Beaver Street, Floor 8 New York, NY 10004 (212) 428-2105 or 1-877-697-4353 http://www.courts.state.ny.us	-Newly admitted: sixteen credits each year over a two-year period following admission to the NY Bar, three credits in Ethics, six credits in Skills, seven credits in Professional Practice/Practice Management each year. -Experienced attorneys: Twelve credits in any category, if registering in 2000, twenty-four credits (four in Ethics) per biennial reporting period, if registering in 2001 and thereafter. -Full-time active members of the U.S. Armed Forces are exempt from compliance. -Reporting date: every two years within thirty days after the attorney's birthday.
North Carolina**	Associate Director Board of CLE	-Twelve hours per year including two

208 Fayetteville Street Mall
P.O. Box 26148
Raleigh, NC 27611
(919) 733-0123
<http://www.ncbar.org/CLE/MCLE.html>

hours in ethics/or
professionalism; three
hours block course
every three years
devoted to
ethics/professionalism.
-Active duty military
attorneys and out-of-
state attorneys are
exempt, but must
declare exemption.
-Reporting date:
28 February.

North Dakota

Secretary-Treasurer
ND CLE Commission
P.O. Box 2136
Bismarck, ND 58502
(701) 255-1404
No web site available

-Forty-five hours over
three year period,
three hours must be in
legal ethics.
-Reporting date:
Reporting period ends
30 June. Report must
be received by 31
July.

Ohio*

Secretary of the Supreme Court
Commission on CLE
30 E. Broad St., FL 35
Columbus, OH 43266-0419
(614) 644-5470
<http://www.sconet.state.oh.us/>

-Twenty-four hours
every two years,
including one hour
ethics, one hour
professionalism and
thirty minutes
substance abuse.
-Active duty military
attorneys are exempt.
-Reporting date:
every two years by 31
January.

Oklahoma**

MCLE Administrator
OK Bar Association
P.O. Box 53036
Oklahoma City, OK 73152
(405) 416-7009
<http://www.okbar.org/mcle/>

-Twelve hours per
year, one hour must be
in ethics.
-Active duty military
attorneys are exempt.
-Reporting date:
15 February.

Oregon	<p>MCLE Administrator OR State Bar 5200 S.W. Meadows Rd. P.O. Box 1689 Lake Oswego, OR 97035-0889 (503) 620-0222, ext. 359 http://www.osbar.org/</p>	<p>-Forty-five hours over three year period, six hours must be in ethics. -Reporting date: Compliance report filed every three years, except new admittees and reinstated members - an initial one year period.</p>
Pennsylvania**	<p>Administrator PA CLE Board 5035 Ritter Rd., Ste. 500 P.O. Box 869 Mechanicsburg, PA 17055 (717) 795-2139 (800) 497-2253 http://www.pacle.org/</p>	<p>-Twelve hours per year, including a minimum one hour must be in legal ethics, professionalism, or substance abuse. -Active duty military attorneys outside the state of PA may defer their requirement. -Reporting date: annual deadlines: Group 1-30 Apr. Group 2-31 Aug. Group 3-31 Dec.</p>
Rhode Island	<p>Executive Director MCLE Commission 250 Benefit St. Providence, RI 02903 (401) 222-4942 http://www.courts.state.ri.us/</p>	<p>-Ten hours each year, two hours must be in legal ethics. -Active duty military attorneys are exempt. -Reporting date: 30 June.</p>
South Carolina**	<p>Executive Director Commission on CLE and Specialization P.O. Box 2138 Columbia, SC 29202 (803) 799-5578 http://www.commcle.org/</p>	<p>-Fourteen hours per year, at least two hours must be in legal ethics/professional responsibility. -Active duty military attorneys are exempt. -Reporting date: 15 January.</p>
Tennessee*	<p>Executive Director TN Commission on CLE and Specialization 511 Union St. #1630 Nashville, TN 37219 (615) 741-3096 http://www.cletn.com/</p>	<p>-Fifteen hours per year, three hours must be in legal ethics/professionalism. -Nonresidents, not practicing in the state, are exempt. -Reporting date: 1 March.</p>

Texas	<p>Director of MCLE State Bar of TX P.O. Box 13007 Austin, TX 78711-3007 (512) 463-1463, ext. 2106 http://www.courts.state.tx.us/</p>	<p>-Fifteen hours per year, three hours must be in legal ethics. -Full-time law school faculty are exempt (except ethics requirement). -Reporting date: Last day of birth month each year.</p>
Utah	<p>MCLE Board Administrator UT Law and Justice Center 645 S. 200 East Salt Lake City, UT 84111-3834 (801) 531-9095 http://www.utahbar.org/</p>	<p>-Twenty-four hours, plus three hours in legal ethics every two years. -Non-residents if not practicing in state. -Reporting date: 31 January.</p>
Vermont	<p>Directors, MCLE Board 109 State St. Montpelier, VT 05609-0702 (802) 828-3281 http://www.state.vt.us/courts/</p>	<p>-Twenty hours over two year period, two hours in ethics each reporting period. -Reporting date: 2 July.</p>
Virginia	<p>Director of MCLE VA State Bar 8th and Main Bldg. 707 E. Main St., Ste. 1500 Richmond, VA 23219-2803 (804) 775-0577 http://www.vsb.org/</p>	<p>-Twelve hours per year, two hours must be in legal ethics. -Reporting date: 31 October.</p>
Washington	<p>Executive Secretary WA State Board of CLE 2101 Fourth Ave., FL 4 Seattle, WA 98121-2330 (206) 733-5912 http://www.wsba.org/</p>	<p>-Forty-five hours over a three-year period, including six hours ethics. -Reporting date: 31 January.</p>
West Virginia	<p>MCLE Coordinator WV State MCLE Commission 2006 Kanawha Blvd., East Charleston, WV 25311-2204 (304) 558-7992 http://www.wvbar.org/</p>	<p>-Twenty-four hours over two year period, three hours must be in legal ethics, office management, and/or substance abuse. -Active members not practicing in West Virginia are exempt. -Reporting date: Reporting period ends on 30 June every two years. Report must be filed by 31 July.</p>

Wisconsin*	Supreme Court of Wisconsin Board of Bar Examiners Tenney Bldg., Suite 715 110 East Main Street Madison, WI 53703-3328 (608) 266-9760 http://www.courts.state.wi.us/	-Thirty hours over two year period, three hours must be in legal ethics. -Active members not practicing in Wisconsin are exempt. -Reporting date: Reporting period ends 31 December every two years. Report must be received by 1 February.
Wyoming	CLE Program Director WY State Board of CLE WY State Bar P.O. Box 109 Cheyenne, WY 82003-0109 (307) 632-9061 http://www.wyoming.bar.org	-Fifteen hours per year, one hour in ethics. -Reporting date: 30 January.

* Military exempt (exemption must be declared with state).

**Must declare exemption.

Current Materials of Interest

1. The Judge Advocate General's On-Site Continuing Legal Education Training and Workshop Schedule (2004-2005)

Note: Due to funding constraints, there have been significant changes to this on-site schedule. This list is current as of 2 February 2006. Please confirm the course date with the listed-POCs before traveling to the on-site.

ATRRS No.	Dates	Location/Unit	Departments Assigned	POC
006	4-5 Mar 06	Fort Belvoir, VA 10th LSO	Administrative & Civil Law; Criminal Law	CPT Eric Gallun (202) 514-7566 frederic.gallun@usdog.gov
007	11-12 Mar 06	San Francisco, CA 75th LSO	TCAP	LTC Burke Large (213) 452-3954 burke.s.large@us.army.mil
010	22-23 Apr 06	Indianapolis, IN INARNG	International & Operational Law; Contract & Fiscal Law	COL George Thompson (DSN) 369-2491 george.thompson@in.ngb.army.mil
011	22-23 Apr 06	Boston, MA 94th RRC	International & Operational Law; Contract & Fiscal Law	MAJ Angela Horne (978) 784-3940 angela.horne@usar.army.mil
012	6-7 May 05	Oakbrook, IL 91st LSO	International & Operational Law; Contract & Fiscal Law	MAJ Douglas Lee (312) 338-2244 (office) (630) 728-8504 (cell) (630) 375-1285 (home) Douglas.lee1@us.army.mil
013	6-7 May 06	Columbia, SC 12th LSO	International & Operational Law; Contract & Fiscal	MAJ Lake Summers (803)413-2094 lake.summers@us.army.mil
014	19-21 May 06	Kansas City, MO 8th LSO/89th RRC	Criminal Law; Contract & Fiscal Law	COL Meg McDevitt SFC Larry Barker (402) 554-4400, ext. 227 mmcdevitt@bqlaw.com larry.r.barker@us.army.mil
015	20-21 May 06	Nashville, TN 139th LSO	Criminal Law; International & Operational Law	COL Gerald Wuetcher (502) 564-3940, ext. 259

2. The Judge Advocate General's School, U.S. Army (TJAGLCS) Materials Available through the Defense Technical Information Center (DTIC)

Each year, TJAGSA publishes deskbooks and materials to support resident course instruction. Much of this material is useful to judge advocates and government civilian attorneys who are unable to attend courses in their practice areas, and TJAGSA receives many requests each year for these materials. Because the distribution of these materials is not in its mission, TJAGSA does not have the resources to provide these publications.

To provide another avenue of availability, some of this material is available through the Defense Technical Information Center (DTIC). An office may obtain this material through the installation library. Most libraries are DTIC users and would be happy to identify and order requested material. If the library is not registered with the DTIC, the requesting person's office/organization may register for the DTIC's services.

If only unclassified information is required, simply call the DTIC Registration Branch and register over the phone at (703) 767-8273, DSN 427-8273. If access to classified information is needed, then a registration form must be obtained, completed, and sent to the Defense Technical Information Center, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, Virginia 22060-6218; telephone (commercial) (703) 767-8273, (DSN) 427-8273, toll-free 1-800-225-DTIC, menu selection 2, option 1; fax (commercial) (703) 767-8228; fax (DSN) 426-8228; or e-mail to reghelp@dtic.mil.

If there is a recurring need for information on a particular subject, the requesting person may want to subscribe to the Current Awareness Bibliography (CAB) Service. The CAB is a profile-based product, which will alert the requestor, on a biweekly basis, to the documents that have been entered into the Technical Reports Database which meet his profile parameters. This bibliography is available electronically via e-mail at no cost or in hard copy at an annual cost of \$25 per profile. Contact DTIC at www.dtic.mil/dtic/current.html.

Prices for the reports fall into one of the following four categories, depending on the number of pages: \$7, \$12, \$42, and \$122. The DTIC also supplies reports in electronic formats. Prices may be subject to change at any time. Lawyers, however, who need specific documents for a case may obtain them at no cost.

For the products and services requested, one may pay either by establishing a DTIC deposit account with the National Technical Information Service (NTIS) or by using a VISA, MasterCard, or American Express credit card. Information on establishing an NTIS credit card will be included in the user packet.

There is also a DTIC Home Page at <http://www.dtic.mil> to browse through the listing of citations to unclassified/unlimited documents that have been entered into the Technical Reports Database within the last twenty-five years to get a better idea of the type of information that is available. The complete collection includes limited and classified documents as well, but those are not available on the web.

Those who wish to receive more information about the DTIC or have any questions should call the Product and Services Branch at (703)767-8267, (DSN) 427-8267, or toll-free 1-800-225-DTIC, menu selection 6, option 1; or send an e-mail to bcorders@dtic.mil.

Contract Law

- **AD A301096 Government Contract Law Deskbook, vol. 1, JA-501-1-95.
- **AD A301095 Government Contract Law Deskbook, vol. 2, JA-501-2-95.
- **AD A265777 Fiscal Law Course Deskbook, JA-506-93.

Legal Assistance

- AD A384333 Soldiers' and Sailors' Civil Relief Act Guide, JA-260 (2000).
- AD A333321 Real Property Guide—Legal Assistance, JA-261 (1997).
- AD A326002 Wills Guide, JA-262 (1997).
- AD A346757 Family Law Guide, JA 263 (1998).
- AD A384376 Consumer Law Deskbook, JA 265 (2004).
- AD A372624 Legal Assistance Worldwide Directory, JA-267 (1999).
- AD A360700 Tax Information Series, JA 269 (2002).
- AD A350513 The Uniformed Services Employment and Reemployment Rights Act (USAERRA), JA 270, Vol. I (1998).
- AD A350514 The Uniformed Services Employment and Reemployment Rights Act (USAERRA), JA 270, Vol. II (1998).

AD A329216 Legal Assistance Office Administration Guide, JA 271 (1997).

AD A276984 Legal Assistance Deployment Guide, JA-272 (1994).

**AD A360704 Uniformed Services Former Spouses' Protection Act, JA 274 (2002).

AD A326316 Model Income Tax Assistance Guide, JA 275 (2001).

AD A282033 Preventive Law, JA-276 (1994).

Administrative and Civil Law

AD A351829 Defensive Federal Litigation, JA-200 (2000).

AD A327379 Military Personnel Law, JA 215 (1997).

AD A255346 Reports of Survey and Line of Duty Determinations, JA-231 (2004).

**AD A347157 Environmental Law Deskbook, JA-234 (2002).

AD A377491 Government Information Practices, JA-235 (2000).

AD A377563 Federal Tort Claims Act, JA 241 (2000).

AD A332865 AR 15-6 Investigations, JA-281 (1997).

Labor Law

AD A360707 The Law of Federal Employment, JA-210 (2000).

AD A360707 The Law of Federal Labor-Management Relations, JA-211 (1999).

Criminal Law

AD A302672 Unauthorized Absences Programmed Text, JA-301 (2003).

AD A302674 Crimes and Defenses Deskbook, JA-337 (1994).

AD A274413 United States Attorney Prosecutions, JA-338 (1994).

International and Operational Law

AD A377522 Operational Law Handbook, JA-422 (2005).

* Indicates new publication or revised edition.
 ** Indicates new publication or revised edition pending inclusion in the DTIC database.

3. The Legal Automation Army-Wide Systems XXI—JAGCNet

a. The Legal Automation Army-Wide Systems XXI (LAAWS XXI) operates a knowledge management and information service called JAGCNet primarily dedicated to servicing the Army legal community, but also provides for Department of Defense (DOD) access in some cases. Whether you have Army access or DOD-wide access, all users will be able to download TJAGSA publications that are available through the JAGCNet.

b. Access to the JAGCNet:

(1) Access to JAGCNet is restricted to registered users who have been approved by the LAAWS XXI Office and senior OTJAG staff:

- (a) Active U.S. Army JAG Corps personnel;
- (b) Reserve and National Guard U.S. Army JAG Corps personnel;
- (c) Civilian employees (U.S. Army) JAG Corps personnel;
- (d) FLEP students;
- (e) Affiliated (U.S. Navy, U.S. Marine Corps, U.S. Air Force, U.S. Coast Guard) DOD personnel assigned to a branch of the JAG Corps; and, other personnel within the DOD legal community.

(2) Requests for exceptions to the access policy should be e-mailed to:

LAAWSXXI@jagc-smtp.army.mil

c. How to log on to JAGCNet:

(1) Using a Web browser (Internet Explorer 6 or higher recommended) go to the following site:

<http://jagcnet.army.mil>.

(2) Follow the link that reads “Enter JAGCNet.”

(3) If you already have a JAGCNet account, and know your user name and password, select “Enter” from the next menu, then enter your “User Name” and “Password” in the appropriate fields.

(4) If you have a JAGCNet account, *but do not know your user name and/or Internet password*, contact the LAAWS XXI HelpDesk at LAAWSXXI@jagc-smp.army.mil.

(5) If you do not have a JAGCNet account, select “Register” from the JAGCNet Intranet menu.

(6) Follow the link “Request a New Account” at the bottom of the page, and fill out the registration form completely. Allow seventy-two hours for your request to process. Once your request is processed, you will receive an e-mail telling you that your request has been approved or denied.

(7) Once granted access to JAGCNet, follow step (c), above.

4. TJAGSA Publications Available Through the LAAWS XXI JAGCNet

For detailed information of TJAGSA Publications Available Through the LAAWS XXI JAGCNet, see the September 2005 issue of *The Army Lawyer*.

5. TJAGLCS Legal Technology Management Office (LTMO)

The TJAGLCS, U.S. Army, Charlottesville, Virginia continues to improve capabilities for faculty and staff. We have installed new computers throughout TJAGLCS, all of which are compatible with Microsoft Windows XP Professional and Microsoft Office 2003 Professional.

The TJAGLCS faculty and staff are available through the Internet. Addresses for TJAGLCS personnel are available by e-mail at jagsch@hqda.army.mil or by accessing the JAGC directory via JAGCNET. If you have any problems, please contact LTMO at (434) 971-3257. Phone numbers and e-mail addresses for TJAGLCS personnel are available on TJAGLCS Web page at <http://www.jagcnet.army.mil/tjagsa>. Click on “directory” for the listings.

For students who wish to access their office e-mail while attending TJAGLCS classes, please ensure that your office e-mail is available via the web. Please bring the address with you when attending classes at TJAGLCS. If your office does not have web accessible e-mail, forward your office e-mail to your AKO account. It is mandatory that you have an AKO account. You can sign up for an account at the Army Portal, <http://www.jagcnet.army.mil/tjagsa>. Click on “directory” for the listings.

Personnel desiring to call TJAGLCS can dial via DSN 521-7115 or, provided the telephone call is for official business only, use the toll free number, (800) 552-3978; the receptionist will connect you with the appropriate department or directorate. For additional information, please contact the LTMO at (434) 971-3264 or DSN 521-3264.

6. The Army Law Library Service

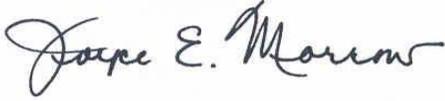
Per *Army Regulation 27-1*, paragraph 12-11, the Army Law Library Service (ALLS) must be notified before any redistribution of ALLS-purchased law library materials. Posting such a notification in the ALLS FORUM of JAGCNet satisfies this regulatory requirement as well as alerting other librarians that excess materials are available.

Point of contact is Mrs. Dottie Evans, The Judge Advocate General’s School, U.S. Army, ATTN: CTR-MO, 600 Massie Road, Charlottesville, Virginia 22903-1781. Telephone DSN: 521-3278, commercial: (434) 971-3278, or e-mail at Dottie.Evans@hqda.army.mil.

By Order of the Secretary of the Army:

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